59

THE LAW AND PRINCIPLES OF
CO-OPERATION

H. CALVERT

~~Coop~~ 25

COOP 21

FIFTH EDITION

1000
2(B)

THE
LAW AND PRINCIPLES OF CO-OPERATION

THE LAW AND PRINCIPLES OF CO-OPERATION

BEING THE CO-OPERATIVE SOCIETIES ACT NO. II OF 1912, BOMBAY ACT NO. VII OF 1925, BURMA ACT NO. VI OF 1927, MADRAS ACT NO. VI OF 1932, BIHAR AND ORISSA ACT NO. VI OF 1935 AND BENGAL ACT NO. XXI OF 1940. WITH UP-TO-DATE AMENDMENTS.

COOP21

WITH INTRODUCTION, NOTES AND APPENDICES

BY

H. CALVERT, C.S.I., C.I.E., I.C.S. (Retd.)
Late Registrar, Co-operative Societies, Punjab.

EDITED BY

B. B. MUKHERJEE, M.A., B.L.
Retired Registrar, Co-operative Societies, Bihar and
Ex-Principal, H. D. J. College, Arrah.
Author of
Co-operation and Rural Welfare in India, Agricultural Marketing in India etc.

FIFTH EDITION

CALCUTTA
THACKER SPINK & CO. (1933) PRIVATE LTD.
1959

Published by Thacker Spink & Co. (1933) Private Ltd., 3, Esplanade East, Calcutta-1 and Printed by J. C. Sarkhel, at the Calcutta Oriental Press Private Ltd., 9, Panchanan Ghose Lane, Calcutta-9.

To

MY COLLEAGUES

M. L. DARLING AND C. F. STRICKLAND

PREFACE TO THE FOURTH EDITION

Since the third edition of this book was published, the movement has come under the scrutiny of a number of Commissions and Committees, and it has fallen to my lot to examine the reports and to incorporate in this edition whatever seemed of permanent value within the scope of the work. I have tried to insert in their proper place the relevant passages from the Report of the Royal Commissions on Agriculture and Labour, the Reports of the Madras and Burma Committees and those of the Central and Provincial Banking Enquiry Committees. It has not been found necessary to omit anything of importance on the ground that it was wrong or obsolete. Almost everything written on Co-operation in the various reports referred to corroborates the views expressed in this book ; similarly nothing in any High Court Judgment which has come under notice has led me to alter the relevant passage in this work.

All Registrars of Provinces have kindly assisted me in the preparation of this edition by sending copies of their latest rules and by referring me to judgments of the Courts ; to one and all I wish to offer my most grateful thanks for their courtesy and kindness in aiding me to make this book as complete and up to date as possible.

Without their willing help I should not have been able to make it as reliable as I trust it will be found.

The annual reports for the years following the issue of the third edition contain little of any outstanding novelty ; good teaching of members and good audit of societies are recognised as the main duties of the staffs. Careful preparation before registration is everywhere insisted on, and those who are busy in building up the movement take little heed of those critics who ask why progress is slow and whether it will have brought about the millennium within ten years.

As in the other editions, I have tried to place before the reader the practice and the views of authorities without intruding my own. The degree of common agreement is so great that it is not necesary to be controversial. But I have allowed one exception in discussing the, to me, amazing order prohibiting primary credit societies from freely using their reserves in their own business. How any body, except the financing bank, can gain from such an order is beyond the power of man to prove.

While incorporating so much new matter I have tried to keep the size of the book down by omitting unimportant portions ; although I asked freely for suggestions for omissions, I received none, and I fear that the number of pages grows with age.

As before, the book bears no official authority whatever. The preparation of this edition has been a heavy task amidst other important duties and I can only trust that it may prove of use to all workers in the co-operative field in India and Burma.

I should like to take this opportunity to thank all who have contributed to gain for this book such success as it has achieved since it was first published.

H. CALVERT

Lahore,
April, 3rd, 1933.

PREFACE TO THE FIFTH EDITION

The fourth edition of this book was published in 1933. Since then revolutionary changes have taken place in India. The country was partitioned and Pakistan was born. India attained independence. The objective of her economic policy is the achievement of a socialist pattern of society. The character of her economic progress with its emphasis on social change affords ample scope for the organisation of co-operative activity. The building up of a co-operative sector as part of the scheme of planned development is, therefore, one of the principal aims of her national policy.

The State Governments with the assistance of the Government of India and the Reserve Bank of India are now engaged in reorganising and revitalising their co-operative institutions and in extending the range of their activities so that it may be possible to evolve a system of co-operative community organisation which will touch upon all aspects of life. In this period of transition it would be a great calamity if co-operators lose sight of the fundamental principles of co-operation or of the implications of Act II of 1912 which even now remains the basic co-operative law of the country.

For the success of the plans for the reorga-

nisation of the co-operative movement it is of utmost importance that the Co-operative Departments and all co-operative organisations should be manned by persons who have faith in the principles of co-operation and have the practical competence to translate them into action and are above all responsive to the needs of the rural population. As early as in 1952 the Reserve Bank of India formulated a comprehensive scheme for co-operative training and organised two types of courses at the Poona Co-operative Training College. It was realised by the Bank that "there was great need and considerable scope for extending such facilities to different parts of India and for diversifying the levels and courses of training". In November 1953 the Reserve Bank jointly with the Government of India constituted the Central Committee for Co-operative Training "for formulating plans and for organising and directing arrangements in regard to the training of personnel employed or to be employed in the Co-operative Departments and institutions in the several States". It is estimated that over 25,000 persons will be required for manning the Co-operative Departments and co-operative institutions during the period of Second Five Year Plan. The Reserve Bank has undertaken to arrange for the training of the higher and intermediate co-operative personnel while the Government of India in conjunction with the

State Governments are responsible for the training of the subordinate personnel. The All India Co-operative Union has been entrusted with the work of co-operative education of the non-official co-operative personnel. Many Indian Universities have organised post-graduate courses in Rural Economics and Co-operation for advanced students who may find employment in the higher grades of the Co-operative Departments or be absorbed in the National Extension Service.

Mr. Calvert is one of that illustrious band of Registrars of Co-operative Societies who built up the co-operative movement in the Undivided Punjab on sound foundations. His book has won well deserved recognition as a co-operative classic. His exposition of the basic principles of co-operation and his comments on the provisions of Act II of 1912 are of inestimable value even to-day.

The publishers have rendered a great public service by bringing out the fifth edition of this standard work. As Mr. Calvert is now living in retirement in the United Kingdom, the task of editing the book and of bringing it upto date has fallen on me. As an old co-operator I consider it a great privilege to be associated with this work. While the text has been altered as little as possible additional information about latest developments in theory and practice, comparative notes on the different

State Acts and recent reported judicial decisions have been incorporated in the footnotes. In the Appendices have been included notes on the Model Co-operative Societies Bill 1957, a chapter on the Role of Co-operation in the Second Five Year Plan and the texts of the different State Acts with their latest amendments.

B. B. MUKHERJEE

Patna (Bihar)
April 1959.

TABLE OF CONTENTS

	Pages
Preface to the fourth edition	vii
Preface to the fifth edition	xi
Introduction	1
What is Co-operation ?	15
Co-operation and its Alternatives	30
The Objects of a Co-operative Society	35
Liability	47
Interest	56
Conditions necessary to make a Credit Society Co-operative	67
Contents of the Act	88
Act II of 1912	91
Preliminary	92
Registration	104
Rights and liabilities of members	138
Duties of registered societies	150
Privileges of registered societies	160
Property and funds of registered societies ...	192
Inspection of affairs	224
Dissolution of society	231
Rules	249
Miscellaneous	380
Model Co-operative Societies Bill 1957 ...	388
Co-operation and the Second Five Year Plan ...	403

APPENDICES

I Bombay 421

II Madras 475

III Bengal 514

IV Bihar & Orissa 585

V Burma 633

VI U. P. 669

VII The multi-unit Co-operative Societies Act, 1942 Act No. VI of 1942 682

CPN-27

INTRODUCTION

In their Report on Co-operation in India, Sir Edward Maclagan's Committee note that most of the faults found in societies are due to the lack of teaching of true co-operative principles and that the importance of proper teaching can scarcely be exaggerated. They dealt with some of these principles but made no attempt to write an authoritative manual on the subject. Their task was rather to examine the higher financial aspects of the movement than to prescribe the proper rules to be observed in the everyday business of a society. Prior to the drafting of the bill which grew into the Co-operative Credit Societies Act of 1904, the Government of India made a very lengthy and very thorough examination of the whole subject as it was then understood. The difficulties of rural finance had repeatedly called for and had secured the closest attention as each period of scarcity and distress succeeded another[1]. Various measures were resorted to until it becomes difficult to grasp the full sum of the enormous efforts made to cope with the problem. Famine Relief, Irrigation Works, Railways, acts for the relief of agriculturists, for advancing capital and for saving them from expropriation all testify to the solicitude of Government. It is not intended to enter into any discussion of India's most pressing economic problem or of any of the measures adopted to solve it save this one of co-operation. The Government of India in introducing the Act to the country published an unusually clear and illuminating resolution but they refrained from any lengthy exposition of the new law or of the principles and practices which had come under review in the framing of it. Their aim was "to lay down merely the general outlines and to leave the details to be filled in gradually, on lines which the experience of failure or success and the natural development of the institutions may indicate as best suited to each part of the

1 For a review of the whole discussion, the reader cannot do better than consult Ray's Agricultural Indebtedness.

country. So far, therefore, as it dealt with the constitution of the societies, the provisions of the Act were confined to those general principles which all Co-operative Credit Societies must accept as the condition of being permitted to enjoy the advantages afforded by special legislation."[1] The object of this book is to fill in the details and to provide material for guidance when new questions come up for decision. It seeks to facilitate the teaching on which the Committee on Co-operation rightly laid so much stress by providing in a handy form, the results of the experience gained in many countries, and by gathering together in one volume a number of the conclusions to which many works in India now subscribe.

In the first place, it must be understood that the Act represents merely one stage in a lengthy progress. As the Royal Commission on Agriculture pointed out, various schemes for agricultural relief banks, for land improvement banks and for land improvement companies, which, in all cases, were to be regulated by the ordinary company law, were placed before the Famine Commission of 1880. None of them met with the approval of the Commission but the idea of an Agricultural Bank was revived in 1882 by Sir William Wedderburn. Under his proposals there was to be, first, a liquidation of existing debts with the assistance of Government and, then, the establishment of a bank to take over the claims of Government under the liquidation scheme and to make further advances to the people. The bank, after taking over Government claims, was to be entitled to recover its dues as land revenue on condition that, before recovery, the other methods available had been tried. Under this scheme the major portion of the funds was to come from Government; Government officials would, in fact if not in name, be officials of the bank and private enterprise would be almost confined to the management of the head office. For these and cognate reasons Sir

1 Government of India Resolution.

William Wedderburn's scheme was not considered suitable,[1] but the essential elements were provided for in the Land Improvements (1883) and Agriculturists' Loans (1884) Acts. These enable the cultivator to obtain money at a low rate of interest for productive purposes approved by Government. Every loan has to be secured by sureties or by a charge upon the land. The revenue officials supervise the employment of the money; accurate accounts are maintained and punctuality of repayment is insisted upon. The main points of difference between this takkavi system and an Agricultural Bank are that while in both Government provides the capital[2] and takes the risk of loss, in the former the granting of the loans and the account-keeping are in official hands, in the latter these functions would be performed by the Bank. In both the collection of principal and interest is entrusted to the subordinate revenue staff. From the point of view of the cultivator there is little difference between borrowing from Government and borrowing from an Agricultural Bank. In both cases, the borrower has no interest in the welfare of the lending body or in that of his fellow-borrowers, he has no participation in the profits and no control over the management.[3]

---

1 For details see Ray's Agricultural Indebtedness, p. 243, et seq. The scheme was held to be financially unsound: 'no amount of support or encouragement from Government can render banking operations successful, whether in India, or elsewhere, if they are begun on an unsound basis, and are not conducted on true commercial principles'. Ibid., p. 253. An experiment on lines not very dissimilar was tried in Bhavnagar State.

2. In Sir W. Wedderburn's scheme Government was to advance 6½ lakhs of rupees to liquidate existing debts.

3. The All India Rural Credit Survey Committee have commented that 'in practice, taccavi is apt to be little else than the ill-performed disbursement of inadequate moneys by an ill-suited agency. It would not be far from the truth to say that the record of taccavi is a record of inadequacies' (p. 82). 'In one State the rule is that in case of short-term loans the average loan per head should not exceed Rs. 15 and the maximum should not exceed Rs. 25 in any individual case'. The Grow More Food Campaign gave a stimulus to taccavi advances in recent years. The total amount advanced under the Land Improvement Loans Act of 1883 and the Agricultural Loans Act of 1884 together was Rs. 921.75 lakhs in 1948-49 as against Rs. 73·40 lakhs in 1937-38.

Advocates of Agricultural Banks for small cultivators cannot find support in experience.[1] The Egyptian Bank has definitely failed to achieve its object and is steadily dwindling. As the Royal Commission of Agriculture stated, from the point of view of providing small cultivators with loans carrying interest at moderate rates, it has definitely proved itself to be a failure. Its history provides a wholesome corrective to the views of those who hold that the problems of rural debt are to be solved at a stroke by the provision of cheap and abundant credit.[2] Agricultural Banks in other countries are, to a large extent, machinery for lending Government funds to educated farmers. Failures have been many but success is also claimed where there is no better machinery available. Dawson's Bank in Burma is a Joint-Stock Mortgage Bank which is not co-operative. The special conditions which have enabled that bank to attain success probably exist nowhere else in India.

In 1892, Mr. (now Sir F.) Nicholson was placed on special duty by the Madras Government for the purpose of enquiring into the possibility of introducing a system of agricultural or other land banks. His report in two volumes (1895-97) was reviewed by the Madras Government in 1899 and came under the notice of the Government of India in 1900. About the same time Mr. H. Dupernex, I. C. S., after much study of the question began to experiment with village banks in the United Provinces and published a little book, "Peoples' Banks for Northern India" in 1900. This came also under the notice of the Government of India, and as a result the question of

1 Mr. C. F. Strickland's 'Studies in European Co-operation' contains an excellent account by an expert on the subject.

2 In the Middle East, Egypt is noteworthy as having developed an agricultural credit institution (Banque du credit agricole d' Egypte) combining the advantages of commercial banks and government credit corporations. But farmers' own credit co-operatives have also been successfully developed on a wide scale attaining a membership of over half a million. In 1948 the co-operatives subscribed capital for a co-operative bank but later it was decided to transform the Banque du credit Agricole itself into a co-operative bank by gradual stages.

(Rural Progress through Co-operatives—U.N. 1954)

introducing Co-operative Credit Societies into India was considered by a Committee which met in Calcutta in December 1900. This Committee was of opinion that societies on Raiffeisen lines might prove suitable. There next appeared the Report of the Famine Commission (May 1901) with its recommendations in favour of Mutual Credit Associations. It must be remembered that amongst the members of this Commission presided over by Lord MacDonnell, was Sir F. A. Nicholson whose reports have been mentioned above. The Commission wrote (Section IV): We attach the highest importance to the establishment of some organisation or method whereby cultivators may obtain, without paying usurious rates of interest, and without being given undue facilities for incurring debt, the advances necessary for carrying on their business. Agriculture, like other industries, is supported on credit......The saukar or bania has, from being a help to agriculture, become in some places, an incubus upon it. The usurious interest that he charges and the unfair advantage that he takes of the cultivators' necessities and ignorance have, over large areas, placed a burden of indebtedness on the cultivators which he cannot bear[1]...... It should be understood from the outset, and made perfectly clear to all concerned, that the establishment of a village bank does not imply the creation of an institution from which the villagers may draw money at their discretion ......It is not intended to frighten the village money-lender

---

1 Cf. Government of India despatch of 1884 (Ray, p. 242): 'There are indications that India suffers from want of loanable capital... The agriculturist, when in need of money for the most prudent purposes has to pay so dearly for a loan that it absorbs the profit of his business'. This quotation possesses some historical interest. In 1884, deposits in all banks in India amounted to less than 17 crores, in 1908 they exceeded 163 crores. What India suffered from in 1884 was the lack of a sound system of rural credit. The principal Joint-Stock Banks, registered in India, had less than one crore deposits in 1885: and over 61 crores in 1922. Thereafter came a sharp drop to 44 crores in 1923, and the figure for 1929 is under 63 crores. In the ten years ending 1930, the deposits in Co-operative Banks have increased from 2 crores to 11, and those in Post Office Savings Banks from under 23 crores to over 37.

by permitting a village bank to enter into competition with him over the whole field of his business, still less is it the intention to encourage borrowing for unproductive purposes. No association, borrowing on the joint responsibility of its members, would be justified in devoting any of its funds to loans for unproductive purposes. It does not consequently enter into the scope of a village bank's operations to lend for marriage festivities or for caste feasts or for similar objects. If people wish to borrow money for such purposes or for any other purpose unconnected with agriculture, they must still go to the village Saukar or bania. The Co-operative Agricultural Bank only aims at freeing the great business of the cultivator's life from the terrible burden, which now presses on it owing to the usurious interest taken for agricultural loans.

The Commission then proceeded to state the principles (Raiffeisen) on which they considered these credit associations should be started.

The whole question was then referred to a Committee which sat at Simla in June and July 1901, and drafted a bill and model rules. These were circulated for opinion and, after much discussion, the Co-operative Credit Societies Act of 1904 was passed. The new law was introduced and explained to the public in a very able resolution by Sir Denzil Ibbetson[1]. The Act was largely framed on the English Friendly Societies Act. It was put into practice throughout India and came in for a certain amount of criticism, especially at a succession of conferences of Registrars. As a result of

1 Rev. and Agr-1-63-3, dated 29th April, 1904. It is particularly important to remember that the first Act was passed before there was Indian 'experience to guide the legislature. Japan affords a parallel. There the modern Co-operative movement is a movement from above and not from below. The new Co-operative Law was not a legislative measure in response to an insistent demand from the people. It was a measure imposed on the people by a paternal Government, as part of an extensive policy by "enlightened autocracy". It was a movement encouraged and promoted by State help and by a vigorous campaign of propaganda.' (Ogata: The Co-operative Movement in Japan, p. 84).

the experience gained, a new Act, the present Co-operative Societies Act of 1912, was passed but the principles of simplicity and elasticity were retained. The present Act is thus the result of the careful and prolonged consideration of a large mass of material, Acts, rules, opinions, etc., and one object of this little book is to explain the Act in the light of this material and the wide experience now available. The Act everywhere followed precedents and nowhere introduced a novelty. In some cases, whole sections, in others clauses and in others special words have been adopted from other Acts. These Acts have been interpreted in various courts and the consequent rulings will come up for consideration before our courts in India and will guide them in their decisions. We are thus, to a considerable extent, bound by rulings recorded before the discussion in India commenced. An attempt has been made to explain how these rulings affect the Act. The Act left many points for future decision, and it is hoped that the material collected will help in the solution of many questions that require to be answered. Hitherto both Act and rules have dealt with bare necessities, but there are many points, not touched on in them, upon which societies require advice and guidance, and it is hoped that some assistance will be forthcoming from the pages that follow.

The Act had to arrange for the fitting in of co-operative principles with the general company law of the land, and to the average busy man it is not always easy to distinguish the sections embodying co-operative principles from those binding all associations; moreover the English co-operators have included men who have fought long and earnestly for their rights and what they have won after decades of endeavour, the Indian legislature has conceded from the start. Exemption from Income-tax is not in England a privilege as suggested in this Act but a right won from the Treasury and acknowledged by Parliament.

In their introductory resolution the Government of India explained that "Legislation was required to take Co-operative

Societies out of the operation of the general law on the subject[1] and to substitute provisions specially adapted to their constitutions and objects. In the second place, it was desirable to confer upon them special privileges and facilities, in order to encourage their formation and assist their operations: and, thirdly, it was necessary to take such precautions as might be needed in order to prevent speculations and capitalists from availing themselves, under colourable pretexts, of privileges which were not intended for them".

For the provisions of company law, rendered inapplicable by section 48, the Act substitutes modifications in sections 3, 8, 9, 10, 11, 12, 13, 15, 16, 17, 18, 20, 23, 24, 25, 26, 35, 36, 37, 38, 39, and 42. These all follow closely sections of the Indian Companies Act, the Registrar taking the place of the Court. Privileges and facilities are conferred by sections 19, 21, 22, 23, 27, 28, 39, 40, and 41, while the precautions are embodied in sections 4, 5, 6, 13, and 14.

The only provisions in any way special to co-operation are the insistence on unlimited liability in section 4, and sections 14, 29, 30, 31, 33, and 34. The conservation of co-operative principles, referred to in section 4, is left to the rules and by-laws; the former are to be framed by the Local Government and the latter have to be approved by the Registrar before registration.

The first point of importance to be noted about the Act is that, like the English Acts, it is a modified code of company law and so necessitates the strictest adherence to rules and by-laws. The Indian Companies Act of 1913 follows very closely the English law and so inherits many judicial rulings from the latter. It is the result of generations of trial and is thus not lightly to be criticised, and amendments should only be undertaken after a thorough study of the his-

1 See, for instance, section 4, Indian Companies Act. Before the House of Lords Committee on 'The Thrift and Credits Bill', Mr. Wolff said there was no reason why Central Banks should not be placed under the Companies Act, but Mr. Wolff makes no claim to a knowledge of company law.

tory of the sections which it is sought to alter. It must be remembered that in most European countries associations were prohibited by laws against combination and conspiracy.[1] In England these were repealed in 1824, but the first Friendly Societies Act was passed in 1793. The Rochdale Pioneers commenced operations in 1844, while in Germany Raiffeisen opened his first bank in 1847-48. The principle of voluntary association for lawful objects, once conceded, has contributed enormously to the material prosperity and moral elevation of the English working classes, while co-operative credit has proved the saviour of agriculture on the continent of Europe. The English and Scotch Co-operative Societies are mostly registered under the Industrial and Provident Societies Act of 1893, which is the result of much experimental legislation commencing from 1852. The credit societies (e.g., in Ireland) are mostly registered under the Friendly Societies Act, 1897 (amended in 1801) which is the last of a series dating from 1793.[2] Similarly the existing laws of France and Germany are based on the accumulated experience of some seventy years, that of Germany being founded very closely on the English Acts and rules.

The rigid provisions of these various laws at first sight may seem to contrast strangely with the simplicity and elasticity of the Indian Act. They must be presumed to be

---

1 Cf. Smith Gordon: Co-operation for Farmers, p. 29. 'It must not be forgotten in this connection that the right of free association which we are apt to regard as the inalienable heritage of the citizen, was only granted comparatively recently in most civilised countries'.

2 Both Acts were devised mainly to meet the requirements of towns-people and not of agricultural communities. Great Britain has not yet got a Co-operative Societies Act. There was no separate law for Co-operatives till 1947 in Italy and all Co-operative Societies were registered under the Commercial Code of 1883. In France the agricultural Co-operative Societies are governed by the Ordinance of 12th October 1945. Denmark has no co-operative law but the societies have binding contracts with members for the supply of their produce. Heavy penalties are imposed for violations of the contract. In Japan there are laws for different types of co-operatives e. g. Agricultural Co-operative Association Law of 1947, the Co-operative Enterprise Law of 1948 etc. The Co-operative laws of Pakistan, Ceylon and Indonesia are based mainly on Act 2 of 1912.

based on knowledge of the people with whom the legislatures were dealing and their absence from the latter Act must not be construed as reflecting the opinion that they are not necessary here. The Government of India has thrown upon Local Governments and Registrars the responsibility for insisting on the necessary rigidity adapted to suit local conditions. It will not be seriously argued that a strictness which seventy or eighty years of experience has shown to be necessary in Europe can be lightly dispensed with in India, and it is a fundamental error to assume that the simplicity and elasticity which characterise the Indian Act give local Governments and Registrars a free hand either in the determination or in the application of the principles of co-operation. Bombay and Burma have in their local Acts introduced more rigidity but have not strengthened the necessity for strict adherence to co-operative principles. The laws of co-operation in Europe represent many years' culture and growth, India has merely imported a selection of plants, it has not introduced a new genus.[1] There are those who would protest against too much strictness and too much rigidity. These overlook the strictness and rigidity of the Agriculturists Loan and Land improvement Acts, of the Indian Companies Act and of the various

---

1 It is India's good fortune that it is not necessary for her to hammer out new systems, or to put to the test untried projects, visionary and otherwise. During the past 50 years experienced men in Europe have been at work, testing new schemes, improving old methods, remedying defects and strengthening weak points. We can profit by their success and avoid the mistakes they fell into (Dupernex, pp. 111 112). The observations of the American Commission (Part 1, p. 9) are particularly apposite:—"We cannot borrow European co-operative methods indiscriminately, nor should we refuse them indiscriminately .....it would be foolish to say that, no matter how successful co-operation has been in Europe, Americans are so different that it cannot be made to work here. The only wise method is to take what seems best from Europe, adapt it to our conditions and try it out".

While recommending the starting of an Institute for Co-operative Research the Co-operative Planning Committee have observed. "In India we have borrowed co-operative ideas and methods from other countries, but there has been lacking a comprehensive study of their applicability to the facts of Indian life and of how they are to be fashioned to meet its needs".

Banks and Insurance Societies Acts, all dealing with transactions analogous to those of Co-operative Societies. Nothing could be more detrimental to the progress of co-operation than the idea that it is compatible with sloppiness. The problem to be grappled with is largely that of rural finance and sloppy finance is intolerable. Fortunately for India, Sir Edward Maclagan's Committee throughout their report, continuously insisted on this important aspect of the movement and it is much to be regretted that, as some recent inquiries have shown, their excellent advice on the need for sound finance has been neglected. Success in co-operation can only be achieved by following the principles which have made co-operation successful. Membership is not compulsory, and those who do not like the principles should not join the societies. It is not part of the duty of co-operators to oppose the creation of non-co-operative credit societies, whether joint-stock banks or loan societies, but it is part of their duty to keep aloof from them and to refuse them the name co-operative. Bengal, for instance, had a number of joint-stock money-lending banks known as loan-offices, which lent to owners and cultivators, largely on personal security, but were not in any way co-operative. It is, perhaps, unnecessary to point out that defective Acts and rules inevitably afford opportunity for occurrences that lead to their own amendment. Alterations of the laws relating to Companies, Insurance Societies, etc., in India have been due to a series of deplorable incidents which revealed the defects in the previous laws. In the case of credit societies, the English law has generally been moderately strict but the desire to reduce to a minimum the legal restrictions on private business enterprise has resulted in the continuance of opportunities for frauds. The intention of the Government of India in adopting the principles of simplicity and elasticity seems not to have been that there should be no rules or even no complete body of rules but that all rules necessary should be framed by Local Governments. The co-operative movement has con-

tained many failures, and each in turn preaches the lesson of strict adherence to good, sound rules.

It is of special interest in this connection to note how the very wide experience of different provinces is tending to a remarkable similarity of rules and by-laws. Other countries supply instances where politicians have sought popularity by securing a relaxation of one accepted rule or another, with the inevitable result of abuse and failure. American opinion seems to be strengthening in favour of the view that the surest method of bringing about true co-operation is by outlining in full in the law a method of organisation that embodies the true principles.

Before proceeding to the discussion of some of the more important aspects of co-operation, it seems necessary to remind critics that the Act of 1904 was deliberately limited to credit. Sir D. Ibbetson described its object as the encouragement of individual thrift and of mutual co-operation among the members with a view to the utilisation of their combined credit, by the aid of their intimate knowledge of another's needs and capacities, and of the pressure of local public opinion. When this Act was drafted there was not available the voluminous literature on all aspects of co-operation which has since been published, and the Government of India could do no more than prescribe general outlines and leave it to selected officials to study the movement in other countries and adapt to local conditions the essential principles of successful rural banking. In 1904 there was no popular demand for the sound control of credit, and the general population had not at that time acquired the knowledge of co-operation and developed the enthusiasm for rural betterment which is now so widespread. The Indian Central Banking Enquiry Committee (1931) were told (cf. para 148 of their Report) that the general impression that co-operative credit alone was the object kept in view at the outset by the Imperial legislators is not correct and that the restrictive scope of the Act of 1904 was a "slip" which was sought to be remedied as quickly as possible. It is

a pity that some member of this Committee did not study the history of the scheme as embodied in contemporary documents.[1]

---

1. In 1948 C. R. Fay noticed a change of mind among co-operative officials in India with regard to village reconstruction. "Formerly they believed that the credit bank should come first; now the feeling is that it should come afterwards. The three B's hold, but the order is reversed; better living, better farming, better business. And it may be that the successful reversal of the order is destined to be India's distinctive contribution to the co-operative idea".

(Fay; Co-operation at Home and Abroad, vol II p 29)

WHAT IS CO-OPERATION?

As there seems to be some confusion as to what is meant by Co-operation, some space may be devoted to an attempt to explain what the term is intended to express. Part, at least, of this confusion seems to be due to the fact that in England, it was co-operative distribution that first proved successful, while, in other countries, it is agricultural co-operation, and more especially credit that has assumed such importance. In the attempt to preserve unity of conception, the various definitions of co-operation have been kept so vague as to be almost completely uninforming. Sociologists have attempted descriptive definitions while legislators have tried to determine the minimum characteristics of a society which must be present if the society is to enjoy the privileges conferred by law. Holyoake for instance, defined it as voluntary concert, with equitable participation and control among all concerned in any enterprise. Holyoake and his contemporaries had their attention fixed on the evils resulting from the early and rapid rise of capitalism. In those days, the onrush of the industrial revolution had necessitated the accumulation of the capital of many people in joint-stock enterprise. Liability was then still unlimited, and it was but natural that those who bore the risk should retain the control and take all the profits. The need for restrictive legislation was not sufficiently foreseen, and grave abuses arose that aroused bitter feelings in the hearts of the workers. To them it seems that money was all-powerful, and the human element was at its mercy. The many preliminary efforts that finally led to the discovery of the real co-operative principles were all directed towards the amelioration of the lives of the workers under the heel of capitalism. Thus Holyoake's definition repeats the cry of men ground down in poverty, who thought their way of escape lay in securing fair dealing, fair opportunity, freedom

to choose their own lives and emancipation from the capitalist and the middleman. Since the little store in Toad Lane was opened, however, the movement has progressed far, and a greater appreciation of all that co-operation can effect has led to a wider conception of its principles. The essential points will, perhaps, become clear if the different defin.tions of various writers are set down. Mr Fay,[1] from the social-economic standpoint, defines a co-operative society as an association for the purpose of joint trading, originating among the weak and conducted always in an unselfish spirit, on such terms that all who are prepared to assume the duties of membership may share in its rewards in proportion to the degree in which they make use of their association. Another writer[2] says, a Co-operative Society is a union of persons established according to principles of equality, the number of whose members is not limited, and the purpose of which is, by the joint performance of economic acts, to improve the financial position of its members or the conditions under which they carry on their profession, by means of either pure self-help, or of self-help with government support, provided that all profits made by joint action shall be distributed in proportion to the extent to which each member has taken part in the business, and not in proportion to the capital invested. The same idea is expressed more tersely by Mr. Herrick:[3] co-operation is the act of persons voluntarily united, of utilising reciprocally their own forces, resources, or both, under their mutual management to their common profit or loss. Another writer says[4] that a Co-operative Society may be defined as a voluntary association of individuals, combined to achieve an improvement in their social and economic conditions through the common ownership and democratic management of the instruments of wealth. The Austrian Act refers to associations with an unlimited number of members, the object of which is

1 Co-operation at Home and Abroad, p. 5
2 Co-operation in Finland, pp. 76-77.
3 Rural Credits, p. 247
4 Rural Reconstruction in Ireland, p. 54.

the promotion of the industry or trade of their members by means of common action or credit. By the Japanese Law of 1921 a Co-operative Society is an association having legal existence, formed by persons of modest means in order to promote and develop, according to the principles of mutuality, the exercise by the members of their occupations and the improvement of their economic condition. The British Columbia Agricultural Association Act (1911) provides that an association shall be deemed to be formed upon the co-operative system if provision is made by its constitution and by-laws for securing to all producers, who are members of the association, a share in the profits of the association in proportion to the value of the produce supplied by them, after payment of a dividend upon the capital stock not exceeding six per cent, per annum. Provision shall also be made for enabling all producers in the district to become members of the association by limiting the number of shares to be held by any single member, or by other effective regulations. The Roumanian code proposes to define Co-operative Societies as associations with a variable amount of capital with no limit to the number of members, who may join or leave them at any date. Their object is to carry on joint work on a definite plan, with a view to furthering the economic and social interest of their members. The Swiss definition is: A Co-operative Society is one constituted by a varying number of persons organised corporately which aims principally at contributing towards the economic prosperity of its members by joint action. The formation of Co-operative Societies with capital fixed in advance is prohibited. The Indian Act suggests (section 4) that a Co-operative Society is a society which has as its object the promotion of the economic interests of its members in accordance with co-operative principles. But it leaves

to the Registrar the decision as to what co-operative principles are.[1]

From these definitions it should be possible to derive an accurate idea as to what co-operation is. Originally, as has already been explained, the movement owed its origin to poverty and to the desire for some way out of all the distress and hardships that poverty entailed. The common bond that held the members together, or that induced them to combine, was poverty or economic distress, first amongst factory workers, and later amongst farmers. As all lacked a sufficiency of capital, capital could not be the basis of association. The only other basis was the human individual, and accordingly the first principle of co-operation is that the members join as human persons and not as capitalists. The second principle follows from the first: for if persons meet to satisfy the common need, there should be no distinction between them in the satisfaction of this need. They must meet on a basis of equality. The third principle is not peculiar to co-operation, but its importance in the life of a society is so very great that it deserves a special place. The act of association must be voluntary. The fourth principle is that the members join to promote the economic interest of themselves, and not of anybody else.

Above all else, however, it must be clearly remembered that co-operation is a form of organisation. Experience

---

1 Under the Belgian Code, "a co-operative society is one which is composed of members whose numbers and holdings are variable and whose shares are non-transferable to third parties". The definition of a co-operative society in German law emphasises (a) an open membership (b) furtherance of the commercial interests of members by means of a common business undertaking.

A co-operative society has been defined "as an association of persons varying in number who are grappling with the same economic difficulties and who, voluntarily associated on a basis of equal rights and obligations, endeavour to solve those difficulties, mainly by conducting at their own risk an undertaking to which they have transferred one or more of such of their economic functions as correspond to their common needs and by utilising this undertaking in joint co-operation for their common material and moral benefit".

(Co-operation p. 20-I.L O. 1956)

seems to show that it is the only system of voluntary organisation suitable for poor people. *Co-operation, then, is a form of organisation, wherein persons voluntarily associate together as human beings, on a basis of equality, for the promotion of the economic interests of themselves.* It is not primarily an ethical movement but a strictly business one and many failures in India would have been avoided if this had been more stressed. Thus stated, it becomes clear that only the miraculous success of the Rochdale Pioneers could afford excuse for their puny effort to find a solution for what is, perhaps, the most difficult problem in the world. Only acute misery could have steeled those few weavers to brave the open contempt and derision of their neighbours and relations. Only the gloomiest of alternatives induced the German cultivators to listen to Raiffeisen. One of thc most important lessons that the American Commission learned in Europe was that it was only when the European farmers were hard pressed, when the governments saw that they were going to lose their farmers because they could not make a living, and when the farmers saw that they must do something to preserve themselves, that they took up the matter earnestly. A great reform was accomplished, but it never would have been accomplished but for the spur of necessity.[1] As the movement has progressed, however, it has graduallv been realised that poverty is not a necessary circumstance in the success of the application of co-operative principles. Poverty is a spur, and for the moderately poor there seems to be no other alternative method of bettering their condition than this one of co-operation; but the poor are not the only people who can derive benefit; indeed, good co-operators deplore the fact that the poorest people remain outside the

1 Observations of the American Commission, Part I.

movement.[1] The one circumstance without which there ean be no successful co-operation is the common need of some economic advantage. If any permanent good is to result, this need must be fully realised by all concerned.[2] The mere existence of a common need affords a field for co-operative effort, but little will be achieved without the growth and development of a real co-operative spirit. As the American Commission put it : the key to the success of the co-operative method of doing farm business is to develop the co-operative spirit, that is, the willingness and desire to sink individual opinions and interests to such an extent that a group of men can work together for common interests. When this spirit is developed to a high degree it means a sort of loyalty and patriotism that lends men even to sacrifices, if necessary. Clearly there is in Europe such a thing as the co-operative spirit, co-operation cannot long exist without it.[3]

---

1 Experience has shown that the very poorest do not join Co-operative Societies, in particular such as do not have a permanent place of residence or a fixed income. Co-operation has achieved its greatest success amongst the moderately poor. Professor Alfred Marshall (Industry and Trade : Bk II. Ch. VII) points out that selling for cash left the improvident customer 'to the old-fashioned shop-keepers.' A writer in' Better Business points out that the agricultural labourer has been too poor to organise co-operative stores. In India, too, it seems to be realised that there are a considerable number of people who appear to be too hopelessly sunk in poverty and debt to be saved by co-operation alone.

"While feeling the same tendency as in Germany towards the neglect of the small man, the Italian Banks have combated it not only in speech, but in deed. Where the funds are limited, the preference is given to smaller loans. Moreover, where funds permit, some of the richer banks, in addition to the ordinary credit business with members, make special loans to poor non-members on no security but the latter's good faith".

(Fay, vol I p 66)

2 Cf. Vogt, p. 235. Co-operation appears and continues where the farmers have a marked consciousness of a common interest in the accomplishment of one definite purpose......Before organisation can become a larger factor in the general farming areas, the people must become conscious of the advantage of such organisation.

3 American Commission: Observations, Part I, p. 9. Cf. Levy Large and small Holdings, p. 198. 'If the co-operative system is to flourish, it presupposes a co-operative spirit; that is to say a certain brotherliness, possibly even some sentimentality of disposition. In little village communities, with old-established and traditionally respected members, families which have held together, in spite no doubt of many family quarrels, for hundred of years, the ground is prepared for co-operative action.'

Given in any area a common need, a realisation of this need and a willingness to seek for it by joint action, the only method of setting to work that holds out any promise of success, is that known as co-operation. Co-operation is an organisation or method of doing business. It is not really anything more than a form, a skeleton frame-work on to which those in need can build to their desire. But there are many to whom it means much more than this, for it so happens that the essentials to success are largely elements of character of high value. The fact that human beings meet together on equal terms to combine for the satisfaction of a common need affords opportunity for the development of an unselfish spirit which leads to higher things than material advantage, so that, to many, co-operation is a faith. This does not mean that it is essentially anything more than a serious business undertaking but it possesses the peculiar feature that it brings solid gains to those who are unselfish enough to work for the good of all, themselves included[1]. By its means the finer elements in human character can be mobilised to secure economic benefits, and so these elements are encouraged and developed. Far from getting the better of his fellow members, the object of each is to help the others in the firm belief that, as they will in turn help him, his need will the more certainly be satisfied. It is a mistake to lay too strong stress on the moral aspect of the movement in its early stages; this will inevitably develop later as success in the economic sphere is attained [2]

The insistence on equality within the society seems to have originally been due to resentment against the inequalities of rich and poor but it is only logical that, as it is a common need that forms the union, this need should determine the status of each member within the society. Whatever their position

---

1 And not excluded as in charitable effort.

2 The Committee on Co-operation laid considerable stress on the moral element. The object of co-operation is the satisfaction of some common need, which all desire. Experience shows that this cannot be accomplished successfully without a strong moral backing, so that people learn that good morals help to secure material progress.

movement.[1] The one circumstance without which there ean be no successful co-operation is the common need of some economic advantage. If any permanent good is to result, this need must be fully realised by all concerned.[2] The mere existence of a common need affords a field for co-operative effort, but little will be achieved without the growth and development of a real co-operative spirit. As the American Commission put it : the key to the success of the co-operative method of doing farm business is to develop the co-operative spirit, that is, the willingness and desire to sink individual opinions and interests to such an extent that a group of men can work together for common interests. When this spirit is developed to a high degree it means a sort of loyalty and patriotism that lends men even to sacrifices, if necessary. Clearly there is in Europe such a thing as the co-operative spirit, co-operation cannot long exist without it.[3]

---

1 Experience has shown that the very poorest do not join Co-operative Societies, in particular such as do not have a permanent place of residence or a fixed income. Co-operation has achieved its greatest success amongst the moderately poor. Professor Alfred Marshall (Industry and Trade : Bk II. Ch. VII) points out that selling for cash left the improvident customer 'to the old-fashioned shop-keepers. A writer in' Better Business points out that the agricultural labourer has been too poor to organise co-operative stores. In India, too, it seems to be realised that there are a considerable number of people who appear to be too hopelessly sunk in poverty and debt to be saved by co-operation alone.

"While feeling the same tendency as in Germany towards the neglect of the small man, the Italian Banks have combated it not only in speech, but in deed. Where the funds are limited, the preference is given to smaller loans. Moreover, where funds permit, some of the richer banks, in addition to the ordinary credit business with members, make special loans to poor non-members on no security but the latter's good faith".

(Fay, vol I p 66)

2 Cf. Vogt, p. 235. Co-operation appears and continues where the farmers have a marked consciousness of a common interest in the accomplishment of one definite purpose......Before organisation can become a larger factor in the general farming areas, the people must become conscious of the advantage of such organisation.

3 American Commission: Observations, Part I, p. 9. Cf. Levy Large and small Holdings, p. 198. 'If the co-operative system is to flourish, it presupposes a co-operative spirit; that is to say a certain brotherliness, possibly even some sentimentality of disposition. In little village communities, with old-established and traditionally respected members, families which have held together, in spite no doubt of many family quarrels, for hundred of years, the ground is prepared for co-operative action.'

Given in any area a common need, a realisation of this need and a willingness to seek for it by joint action, the only method of setting to work that holds out any promise of success, is that known as co-operation. Co-operation is an organisation or method of doing business. It is not really anything more than a form, a skeleton frame-work on to which those in need can build to their desire. But there are many to whom it means much more than this, for it so happens that the essentials to success are largely elements of character of high value. The fact that human beings meet together on equal terms to combine for the satisfaction of a common need affords opportunity for the development of an unselfish spirit which leads to higher things than material advantage, so that, to many, co-operation is a faith. This does not mean that it is essentially anything more than a serious business undertaking but it possesses the peculiar feature that it brings solid gains to those who are unselfish enough to work for the good of all, themselves included[1]. By its means the finer elements in human character can be mobilised to secure economic benefits, and so these elements are encouraged and developed. Far from getting the better of his fellow members, the object of each is to help the others in the firm belief that, as they will in turn help him, his need will the more certainly be satisfied. It is a mistake to lay too strong stress on the moral aspect of the movement in its early stages; this will inevitably develop later as success in the economic sphere is attained [2]

The insistence on equality within the society seems to have originally been due to resentment against the inequalities of rich and poor but it is only logical that, as it is a common need that forms the union, this need should determine the status of each member within the society. Whatever their position

1 And not excluded as in charitable effort.

2 The Committee on Co-operation laid considerable stress on the moral element. The object of co-operation is the satisfaction of some common need, which all desire. Experience shows that this cannot be accomplished successfully without a strong moral backing, so that people learn that good morals help to secure material progress.

outside, they are all lacking something they desire, and if there be any difference admissible, it is in the intensity of their want of the common object. This difference may render desirable an allotment of voting power on the basis of the use, which the members make of their society, but it is otherwise an invariable rule that each member should have one vote and no more. In no case could there be a difference based on capital contributed.

The essence of co-operation is that each shall work for all and all shall work for each in the attainment of their common need; it is thus not unnatural that each in doing his share of this bargain should desire some assurance that all will equally do theirs; to meet this, the members must agree to bind themselves by a formal contract. Co-operation is a business organisation, and business principles demand that there should be a business-like contract drawn up and subscribed to by all who are going to participate. The association must be put on to a formal basis; and as the success of the enterprise depends on the loyalty with which each one of the members works for the achievement of the object and for stern adherence to the contract, there must be freedom to choose with whom they will associate, and freedom to correct the choice or to withdraw. Each member must be able to express his opinion on the advisability of admitting others, so that admission depends on popular election: he must be able to give effect to any alteration of opinion as to the fitness of another to perform his share, so that expulsion by popular vote must be provided for: he must be given the opportunity of withdrawing, if he finds that he himself can no longer loyally work with others. Under no other circumstances could the motto "Each for all, and all for each" be worked up to.

This insistence on the voluntary principle appears to con-

flict with certain practical examples.[1] In one part of Burma, it was a rule that anyone who desired to join a credit society, should also join the cattle insurance society in the same village. This, however, was more prudence than compulsion, as, if a man borrowed to buy cattle, his fellows reasonably insisted on his taking an obvious precaution against sudden loss. The insurance made the loan more certain of recovery and so there was nothing un-co-operative in the rule. In certain provinces of Belgium, Mr. Strickland found compulsory cattle insurance imposed by the provincial governments. Some other instances are worth noting as they show, not so much disregard of an important co-operative principle, as appreciation of the importance of poor people co-operating. In Tunis, all native agriculturists are obliged to belong to the thrift societies. In what is now Bulgaria, the law compelled the farmers to join banks established for them in the principal cities of each district[2]. In French West Africa, the Governor-General has power, in the districts where this measure is deemed desirable, to compel farmers or breeders to join societies. In that case, the contributions of the members are collected in the same way as the taxes. In South Africa (1924) a clause has been inserted providing that, if 75 per cent, of the producers of any kind of agricultural produce who also

---

1 "The tradition of English labour is strongly against the compulsory arbitration of disputes but definitely favourable to the legal minimum wage ; and only a remnant of Mill-ites object to the special protection of women in the Factory Acts. More fundamentally consumers' co-operation is voluntary, because only under a voluntary regime can consumer preference be freely satisfied. But if the State can render a particular service more efficiently, there is a prima facie case for its doing so ; and if the State is democratically organised, State service becomes liberty organised from above, which conceptually is the complement of voluntary co-operation".

(C. R. Fay—Co-operation At Home and Abroad vol II p 25)

2 Herrick, P. 429. Cf. Modern Japan by W. M. McGovern, pp. 235-36. Under government auspices, farmers' guilds were established, which brought about mutual aid, the development of scientific agriculture ......and common purchase and credit. Eventually membership in these guilds was made compulsory on all farmers. In Greece, Farm Settlers' Co-operatives have compulsory membership of farmers who have settled on public or expropriated land.

produce 75 per cent. of such products in a given district, area or province and are members of a recognised Co-operative Society, agree to the collective sale of their said products, each grower of such product in such area will in future be legally bound to sell it only through the said collective selling agency, quite irrespective of the fact whether or not he belongs to the said Co-operative Society. Russia tried compulsion from 1919 to 1923 but appears now to have changed this policy. There is a tendency towards compulsion to join cattle insurance societies in America, and hail insurance is apt to become a function of the local governing body in consequence of the small sums to be collected and the widespread nature of the undertaking. It would, perhaps, be better to regard these as socialistic rather than as co-operative enterprises. There is much the same excuse for fostering compulsory co-operation in backward tracts as there is for introducing compulsory education. The end becomes so desirable that the means appears to become less important. Compulsory co-operation, wisely conducted, is compulsory adult education in business methods. Compulsory thrift is generally admitted to be beneficial. The result, however, can never be the same as voluntary co-operation. Voluntary membership not only strengthens individual responsibility, but it differentiates co-operation from State schemes of social reform.[1]

---

1 The Co-operative Planning Committee (1946) have recommended that "after careful examination we have come to the conclusion that the voluntary principle governing admission to the membership of a co-operative society should be respected and that no one hould be compelled to join a society. In certain kinds of co-operative activities like consolidation of holdings, crop protection or irrigation, if compulsion is not introduced, it is likely that what is generally admitted as an object essential for economic progress will not be attained. We, therefore, recommend that in the larger interests of the country, a resolution passed by members of a co-operative society who form two-thirds of the community affected should be made binding by law on non-members also."

Sec 64 G of the Bombay Act provides for the registration of a Farming Society where 66 per cent of the owners in possession of not less than 75 per cent in aggregate of the land proposed to be covered have given their consent. On the scheme being sanctioned "all the owners of lands included therein, whether they are members of the society or not, shall have such rights and shall be subject to such liabilities as are conferred or imposed on them under the scheme".

It has been explained above that it is a realisation of a common need that brings people into the association; they enter to get something for themselves, and it is the object of the society to secure this for them. The society exists for the members, and not for anybody else. Special significance, therefore, attaches to the words "of their members" which are found in most Acts dealing with Co-operative Societies. In some provinces, the management is apt to fall into the hands of honorary workers who act more from feelings of charity towards their neighbours than from any desire to train them to dispense with their guidance and help. If a business is such that it cannot be limited to its members, it cannot be truly co-operative.[1] Thus, it would be almost impossible for a railway or large canal to be purely co-operative. It must be clearly understood that those who associate together, do so for the advantage of themselves, and not for that of others; to reconcile this with the principle of unselfishness, there has come to be recognised another principle: Co-operation is open to all; there can be no arbitrary limit to the number of members. This is an obvious corollary from the fact that the common bond is the common need, the object is the common good, therefore those who join, must do so in no selfish spirit; they must be prepared to admit all who have the same need, and who are ready to subscribe to the common contract[2].

As the members join to secure something they all need, the advantage to be gained is the satisfaction of this need if the need of one is greater than that of another, he will derive the greater advantage. That other must not seek to balance the account by seeking some gain that is not in the contract. More especially is it necessary that he does not seek to gain

---

1 Cf. Co-operation in Finland, p. 12.

2 The great force which drew the faithful to come past many brilliant shops to a humble store, was the faith that competition should give away to co-operation......It means that the movement was one by the weak to help the weak, that a newcomer was to be welcomed, because he wanted help, and not according to the joint-stock company rule, in proportion to the capital which he contributed. Marshall, Industry and Trade, Bk. II, Ch. VII.

advantage at the expense of his fellow with the greater need. The chief danger, and almost the universal one, to be avoided is that he, with more capital, should gain from the need of him with less. Co-operation recognises that capital is entitled to a fair interest, but it refuses to admit any other right attaching to its possession or claimed by its owner, and more especially the claim to a controlling voice in the enterprise. If from the activities of the association there results any divisible surplus, this must be divided amongst those from whom it has been derived in proportion to their contribution to it. As a matter of ordinary business caution, it is usual to allow for contingencies that may not happen; goods are sold for more than the actual cost price; interest may be charged at a higher rate than is necessary to cover expenses; the producer may be given less than his crop has brought; in all these cases, the resulting surplus is not regarded as ordinary business profit but as an overcharge which belongs to those from whom it has been derived and to whom it should be returned.

People, nowadays, have grown so accustomed to the capitalistic form of organisation that they experience difficulty in freeing themselves from some of the ideas associated with that form when dealing with co-operation, which is not a modification of capitalism but an alternative to it. Questions of profits, control, voting power, transfer of interest, rights of members and dealings with non-members, etc., are dealt with from a point of view quite different from that under the capitalist system. Thus co-operation is the form of organisation most suitable for small people and small enterprises. In agriculture, it appears to be the only form that is of practical value, for most cultivators are men of limited means, and from the nature of their calling, are unable to combine their efforts in the factory system. They cannot collect their raw materials and their capital inside a mill, they cannot carry specialisation so far as the manufacturer and they cannot reduce costs by the methods familiar to him. At the same time, it is recognised that organisation is the key to success and to be

successful agriculture must be organised. Accordingly it is found that, in practically every civilised country, governments are endeavouring to promote co-operation. Agriculture is still not only the most essential but the most important and the biggest single industry in every country except England, where it has only recently lost its premier place. The war drew attention to its position as the paramount factor in the life of any people, and it is not exaggerating to say that co-operation is now recognised as necessary if any country is to get the best out of its land. It is regarded as the panacea for most rural ills, and throughout the civilised world it is being strenuously advocated at the expense of the State.[1]

Co-operation differs from its rival, capitalism, in that it promotes peace and not strife, unselfishness and not self-seeking. Both are forms of economic organisation, but with the great body of European co-operators especially among the leaders, co-operation means some thing more than a device for enabling a farmer to save or to make more money. Many of its most ardent apostles look upon it as a sort of social reform, indeed in some cases, as religion. They consider it not only as an economic, but also as a moral movement. And there is little doubt that many helpers are attracted by the evidence they see on every hand of social improvement wherever co-operation has obtained a firm foothold. It seems impossible to study the progress of the movement in any country in the world without being impressed by the great moral gain accompanying the spread of these societies for self-help through mutual help. But the American Commission

1 Co-operation occupies an important place in India's Second Five Year Plan. "Economic development along democratic lines offers a vast field for the application of co-operation in its infinitely varying forms. Our socialist pattern of society implies the creation of large numbers of decentralised units, both in agriculture and industry. These small units can obtain the advantages of scale and organisation mainly by coming together. The character of economic development in India with its emphasis on social change, therefore, provides a great deal of scope for the organisation of co operative activity. The building up of a co-operative sector as part of the scheme of planned development is thus one of the central aims of national policy"—(Second Five Year Plan. pp. 21-22).

spoke wisely when they said that co-operation should be entered upon at the outset, because it promises to be a more profitable way of doing business than the old way of every man for himself. Co-operation is more than this, but to be successful it must be built on a business and not on a sentimental, basis. The sentiment will come later and will help to maintain the co-operative scheme.[1] But sentiment will ruin co-operation if allowed to dominate the business aspect.

It may be advisable to sum up here the result of the above discussion. Co-operation is an alternative form of organisation to capitalism; it is specially suitable to people who have no capital sufficient for the full satisfaction of their needs on a joint-stock basis; it is essential to the best progress of agriculture, so much so that it is practically impossible for a country of small holdings to achieve prosperity without it. The mere fact that the Indian countryside is studded with money-lenders anxious to afford credit to the cultivators for all purposes, productive or unproductive, blinds many to the absence in the same area of sound banking facilities. The needs of the small cultivator of from three to eight acres cannot be met by the Joint-stock Banks directly and the only sound method of providing sound credit facilities is the co-operative.

The absolutely necessary principles are that people should agree to associate voluntarily on terms of equality in order to secure the satisfaction of some common need. Human beings, and not capitalists, bind themselves together to "work each for all and all for each." From these premises there follow a series of subsidiary principles in a perfectly logical manner, but to the ordinary mind, biassed by daily experience of capitalism, it is sometimes difficult to follow this logical sequence. In consequence, there is apt to be doubt as to the amount of support that should be accorded to the propagation of the movement. Briefly, an agricultural state cannot pro-

1 American Commission. Observations, Part I, p. 22.

gress without it, and it is for the government to decide whether they desire prosperity or not. If there be any who dispute the above assertions, they may well be asked, in view of the voluminous evidence in support, to produce some alter=native method of making a country of small holders prosperous.

Furthermore, it is the experience of every country that has any experience to record, that co=operation stands out for moral uplift, for honesty and for the homely virtues that count for so much in the daily lives of the people. It possesses the peculiar faculty of making virtue pay. All human beings are continually striving after the satisfaction of some material need. Co=operation holds out the pros=pect of success in this effort, provided the persons concern=ed possess certain moral qualifications. Without these, failure is inevitable. Through co=operation morality is taken out of the copy book maxim and placed in the forefront of human action as absolutely essential to success in the most ordinary affairs of life. Moreover, the morals of an indivi=dual cease to be a purely private matter for his own cons=cience, they become of importance to the whole community to which he belongs.[1]

---

1 "The more one attempts to bring co-operation into focus with such notions as competition and socialism, the stronger grows the conviction that co-operation cannot be resolved into aspects of these. It is not the negation of competition, nor does it affect competition in one way only. It is not the herald of socialism, nor is it a means to combat it. The co-operative synthesis lies deeper than this. It centres about a common and original impulse of man, which inspires him, whatever be his environ-ment, to make his weakness strength by the simple plan of joining with others who are similarly conditioned, in the pursuit of a goal, which can be attained in proportion as he is prepared to co-ordinate his own interests with those of his fellow members" (Fay—Co-operation at Home and Abroad, vol I p 352)

CO-OPERATION AND ITS ALTERNATIVES

There are many pecple who hold the opinion that co-operation is not only a snare and a delusion to the poor, but that it actually perpetuates the dominant position of capital by turning the poor into small capitalists. There was a time when socialists struggled to hinder the spread of the movement, and it is only very recently that Trade Unions have come to terms with it. The main line of cleavage follows the position allotted to capital. Co-operation differs from Socialism in being essentially individualistic. It stands out for the freedom of the individual, who is encouraged not to abolish private property and capital, but to acquire some for himself, to improve his economic position by working under his own control and to take the management of his own affairs into his own hands. It is true that in different countries different methods are adopted to induce individuals to join Co-operative Societies, in some French colonies, there is something that can hardly escape being called compulsion, in Japan, there is a tendency to confine State aid to co-operative societies that has much the same effect but this pressure is designed to impel individuals to undertake the task of working for their own uplift, instead of leaving too much to a kind Providence or a far-seeing government. Self-help is the watchword. Even a State-stimulated Co-operative Society strongly resists any suggestion of interference from government in the management of its internal affairs It seeks to become self-sufficing and independent, even though it be prepared to accept government aid when all other sources fail. Essentially it is based upon voluntary association and voluntary aid, and so differs from both Socialism and Communism. Inasmuch as co-operation tends to bring contentment and relieve economic distress, it clears away the material on which Socialists rely to create that resentment against the present system which is deemed

necessary to induce people to accept their ideas. Co-operation seeks to make the best of the existing economic system by removing the more glaring evils of capitalism. As Prof. Gide points out, unlike socialism it takes its stand on, and works within, the existing economic framework : it is already carrying into practice some of the most important desiderata of socialism, and it is bringing about an immediate and very real amelioration in the conditions of those who practise it......Co-operative associations aim not at doing away with capital, but at depriving it of its preponderant role of management in production, as also of the tribute it levies in the form of profit. The suppression of profit in all its forms was the essential point in Owen's system. By making capital, instead of the profit-taker, a mere wage (interest) earner, the co-operative system is neither more nor less than a social revolution.[1] It is in no sense an enemy of private capital. Where it is not possible to obtain complete control of capital, co-operators agree to a system of profitsharing, whereby after capital has received a fair interest, the remaining profits are divided amongst the capitalist and the workers on a basis previously agreed upon. In scme cases the workers are admitted to a share of the control and what is known as co-partnership results. If in such a case the workers could secure complete control of capital and management, there is co-operative production. Thus co-partnership is regarded as a half-way house towards co-operative production, and so excites no enemity amongst co-operators. With Trade Unionists, however, the position is different, they are apt to look askance at all profit-sharing schemes on the grounds that these (1) make workers into capitalists, (2) discourage them from joining unions by making them contented with their lot, and (3) induce workers to work harder, improve their efficiency and gain more profits.[2]

1 Gide : Political Economy, pp. 492-494

2 Cf. Better Business, May, 1918 p. 250.

Prof. Alfred Marshall[1] quotes an extreme instance of this suspicion of co-partnership, in which in response to the question : "Is there any objection to profit-sharing and collective partnership with the men, not collectively as a union, but individually?" It was replied : "Yes ; for every man so singled out is spiritually transferred from the side of labour to the side of capital. His concern is no longer to abolish the wage system for himself, his fellows and the nation at large, but to obtain all the profit he can extract from it."

Thus co-partnership is a system whereby all those engaged share in the profit, capital, control and responsibility according to an agreement arrived at beforehand. This means peace and not strife. Trade Unionism adopts an attitude of antagonism towards capital that prevents it from coming to any terms of a lasting nature with it. As Holyoake expressed it, it accepts the mastership of employers and the permanent dependence of workmen, while co-operation seeks to supersede employers as a separate class and to establish the independence of labour.

The distinctive features of co-operative work are that (1) the members of the co-operative group are associated by their own free choice; they determine for themselves of how many persons and of what persons that group shall consist ; (2) those associated select from amongst themselves their own leaders whom they can also remove ; and (3) they arrange the division of the collective wages between the members of the group in such manner as may be mutually agreed upon between them as being equitable[2]. These three features are found in Trade Unions, but while co-operative workers divide all the collective receipts, the modern Trade Unionists insist on a full trade union wage and may leave any surplus to the foreman contractor[3]. Trade Unions have their claims on a wage system, co-operators would have no wages, but would divide all receipts (labour income and profits) amongst the

1 Industry and Trade, pp 855-856.
2 Schloss : Methods of Industrial Remuneration, p. 155
3 Ibid., p. 236

workers. To put it briefly, so long as there are employers and employed, the latter must receive a certain remuneration fixed beforehand, known as wages ; where the workers are their own employers, the remuneration consists of an uncertain sum which can only be determined when the result of the enterprise is known.

Co-operation is, above everything else, a principle of peace and it has for long been out of sympathy with trade unionism in as much as it does not regard the latter as essential to its own scheme. It is a business organisation, working on business lines and keeping accounts which prevent its followers from asking for too much. It has thus been possible for a Trade Union of employees of Co-operative Societies to come into conflict with its co-operative employers. And the latter have found considerable difficulty in deciding upon the policy they should adopt towards their wage earners.

In actual practice, there is very little conflict between the adherents of the two policies. Workers who would not think of joining in a society for co-operative production, freely join co-operative stores, and a very large proportion of members of Trade Unions in England are actually members of these stores. An agreement for mutual support has been arrived at in Great Britain which is causing some anxiety to co-operators of the old school. It involves the formation of a Labour and Co-operative Political Alliance whose objects are : to correlate and co-ordinate the forces and activities of the Labour and Co-operative movements in respect of representation in Parliament and on all local and administrative bodies, and to sustain and support one another in their respective and combined efforts to set up the new social order, and with the ultimate object of the establishment of a Co-operative commonwealth. The alliance would consist of the organisations affiliated to the Labour Party, the Trade Union Congress and the Co-operative Party[1]. Such an agreement, it would seem, could

1 Times' Report. Socialists, also, have now withdrawn their opposition and advise their adherents to join Co-operative Societies (Gide).

hardly last without entailing the abandonment of some of the ideals of co-operators. Co-operation is not a political movement; it does not seek to gain its ends by political means. It works by persuasion, by placing within the reach of non-members advantages which they cannot enjoy except by becoming members. Trade Unionism works by compulsion, almost it has been said, for compulsory State-enforced co-operation. Co-operation stands for self-help, for private enterprise and for the greatest extension of private property. It stands or falls on its merits, unaided by compulsion or State coercion; each member is free to leave the movement on the day he no longer desires to co-operate[1]. Trade Unionism is tending towards collectivism or nationalisation of public interests. Co-operation is a spontaneous association on the basis of common interests. It is a business and not a political organisation and it stands or falls on its business efficiency. The limits to its expansion are fixed by its own success in competition with its rivals. Co-operation can only persist where its members gain something more than they could gain without it.

In the above discussion, the comparison has been almost confined to the industrial sphere, because it is in that sphere that there has been any clash of principles. In agriculture it would seem to be without serious rival where holdings are too small to permit of capitalist management.

---

1 Summing up the trends of agricultural co-operation in Post-War Europe C. R. Fay wrote in 1948—"It is still impossible to tell the future of the contemporary mingling of co-operative and State institutions. At one time it seemed as though compulsory co-operative marketing with the State behind it, might supersede the old voluntary system, especially since, parallel with this movement towards State co-operation went a certain distrust of the voluntary movement, naturally strongest in those countries where all voluntary effort is suspect. It seemed possible that the two movements might persist as rivals, or even that State marketing might lapse with the crisis which called it into being. In fact, none of those things have happened. Rather co-operative and State action in this field have coalesced. The balance of these two elements, the strength and probable durability of the amalgam, have varied from country to country, but for good or ill, the co-operative movement has been supplemented by a new economic form whose powers are in the national sphere, obviously greater than those which a voluntary movement can normally exercise" (Fay: Co-operation At Home and Abroad vol II p 489).

THE OBJECTS OF A CO-OPERATIVE SOCIETY

The principles of Co-operation, it has been shown, are very simple. When, however, attention is turned to the applications of these principles to practical problems, whatever intricacies and technicalities are involved in these problems fall to the co-operator to be solved. Co-operation, it is claimed, is the only form of organisation from which the poor can derive lasting advantage; therefore, unless it can be of use in arriving at a solution of the troubles from which the poor suffer, it is after all but a sorry remedy for their distress. Similarly, it is claimed that co-operation is the only form of organisation open to agriculturists, and is essential if the cultivators are to get the best out of their holdings; unless, then, it can be of use in solving the ills of rural life, it can hardly lay claim to the loyalty of the farmers. It is one or other of the economic interests of the members that must form the object of a society; these economic interests vary widely; they include all the legitimate activities of the agricultural class; if the Registrar were merely a registering officer as in England, he would have little to do beyond seeing that by-laws were in accordance with the law and that the law was not infringed. In fact, in India, he, whether a Government official or an honorary worker, has been made the foundation of the movement; so that to him falls the duty of studying all possible objects, and of deciding which to encourage and which to postpone to a more favourable occasion. The main duty of the Registrar and his staff is to study the economic interests of the class from which members are drawn and to devise measures, on co-operative lines, whereby these interests can be promoted. He is becoming more and more the head of a great educative movement wherein the people are taught how to get rid of their troubles and improve their lives by their own united efforts.

The fact that the objects of a society must be the promotion, in one way or another, of the economic interests of the people who are prepared to co-operate, involves the close study of economics. In so far as the movement is concerned with the rural classes, the co-operative department becomes one of applied practical rural economics, and all concerned must become masters of this very intricate art. To express it in more popular language, co-operation is a means whereby the prosperity of the mass of the people can be improved. Before, however, the general prosperity can be raised, causes of the present low standard must be discovered and for every cause there must be found a remedy.

There are two, and only two ways, by which the wealth of a people can be increased. Some persons talk as if they knew of other methods, and would disclose these if voters would trust them, but the only ways, known to man, are to increase production and to decrease consumption. If wealth is to increase, production must exceed consumption. Thus the material position of a people can be increased by one or more of the following methods:—

(a) teaching the producers to produce more from their present industry, by scientific methods, improved implements, better seeds, new crops, etc.,

(b) teaching the producers to produce wealth in the hours during which they are at present idle, e.g., sericulture, or cottage industries for cultivators in the slack season,

(c) increasing the number of producers by reducing the number of those who at present add nothing to the wealth of the country e.g., reduce the number of unnecessary middle men, distributors, etc.,

(d) decreasing special sources of waste, such as litigation, scattered fields, damage by insects, etc.,

(e) decreasing general sources of waste, such as needlessly high prices of commodities, excessive cattle morta-

lity, preventible sickness and inefficiency of the workers, low standard of labour, excessive costs of marketing etc.,

(f) substituting a productive for a wasteful use of the factors of wealth, e.g., turning into productive channels the trained intelligence now devoted to the law, or the money now hidden away in hoards.

This does not claim to be an exhaustive list of the methods of increasing the wealth of a country,[1] but it will suffice to indicate the lines along which the objects of co-operative societies may be classified. It would be an easy task to re-arrange them under the heads of land, labour, capital, and enterprise; but these are factors in the production of wealth and, in India, waste, or non-production, is almost as big a source of poverty as the low standard of production.

Of all the possible objects open to a society, it is necessary to decide which shall be included in the by-laws, for a society is bound by its object, it cannot legally incur any obligation not directly connected with the furtherance of these objects. "A society cannot have any other object than those specified in the by-laws, nor can its specific purposes be other than those in the Act, and the funds cannot be applied to other purposes than those expressed in the rules"[2]. It is therefore of importance that the objects for which a society is being formed should be clearly, definitely and exhaustively set forth in the by-laws, that have to be approved before registration can be effected. Any act which is beyond the objects thus specified is ultra vires and void, and, if performed by the Committee or any office-bearer, is not binding on the members. If thereby any loss is incurred, the official responsible is personally liable.

1 This must not be confused with the wealth of the individual. A farmer wants not more produce but more profits, and he may get higher profits by decreasing the costs of production, obtaining a higher price for his grain etc., without increasing the gross yield. Co-operation may thus confer great benefit upon farmers without any increase in production.

2 Fuller: The Law Relating to Friendly Societies, 3rd Edn., p. 38.

The importance of this rests in the common experience that, when a co-operative society has been started, it is often desired to use the organisation for purposes not contemplated when it was registered. The members are then faced with the alternative of altering their by-law or starting a new society to meet the new need. To avoid the former, it is customary in some countries, to enter in the by-laws a number of objects even though, at the commencement, it is not intended to embark on more than one. This has led to a long controversy concerning combination of objects, about which something must be said. In England, societies registered under the Friendly Societies Act are not corporate bodies and have not got limited liability : they can deal in credit, but not in supply. It is held, with good reason, that a society, which uses the money of other people, should not be allowed to impose a limit to the liability of its members that would be likely to involve the depositors in loss. Further, there is a deep-rooted objection to allowing a banking business and a trading business in the same place : the Chief Registrar has always opposed it and an attempt to legalise it by the Thrift and the Credit Bill proved abortive. The discussion is somewhat involved with the question of State aid : generally it seems that the combination of credit with the provision of actual farm requirements is free from objection, but it is not considered permissible for State aided propaganda to be directed to the formation of societies for the supply of ordinary household requirements. Apart from this, it is considered that the combination of credit and trading in the same society would lead to the Committee as traders borrowing from themselves

as bankers.[1] Moreover the important principle of selling only for cash and never for credit would be difficult to maintain when the member could borrow from one branch and pay into the other. The credit branch may press supply in order to induce members to borrow more, while the supply side may ask for easier terms of credit in order that members may purchase more. Theoretically it seems to be agreed that, in small societies, it is better that supply and credit should be combined when there is not on either side enough work to justify a separate organisation. In Ireland, Sir Horace Plunkett pleaded for power to combine both objects in one organisation on the ground that the credit work alone did not yield enough profit to pay for necessary establishment. But the Agricultural Organisation Society (Ireland) in their Report for 1923, wrote : "Experience seems to be showing that the best form of co-operative organisation is organisation per commodity rather than area organisation dealing with all commodities. Organisation seems to work most smoothly where there are societies covering a county, or a considerable part of a county, for each distinctive branch of work, such as purchase of requirements and sale of grain, dairying, cattle auction marts, wool, eggs and poultry, and fruit and vegetable auctions." The Chief Registrar of Friendly Societies (England) in his Report for the years 1918-20, wrote : "An interesting feature of farmers' societies (in the U.K.) is the extent to which they are developing the sales of groceries, draperies and other

1 The All India Rural Credit Survey deprecates "the practice which has developed during and after the war and which in some cases still survives, of the central banks taking up trading activities possibly at the behest of Government but certainly at risk to their depositors. No central bank should engage in trading activities" (vol II. p. 447). In the case of the primary agricultural credit society it has been recommended that the society should finance its members on the condition that the produce of the member is sold through the marketing society with which it works in co-operation. Central banks in many States, specially in Madras and Bombay, undertook the purchase and distribution of controlled articles. The Bihar State Co-operative Bank did a large volume of business in chemical fertilisers, salt, cloth, brick burning coal, iron for agricultural implements, text books etc. Recently these activities have been transferred to the Bihar State Co-operative Marketing Union.

produce, as an addition to agricultural requisites. This feature of co-operation is most evident in Welsh societies. Some such societies deal with the Co-operative Wholesale Society, and there is little to distinguish them from ordinary distributive stores." The British Ministry of Agriculture in its leaflets on the Agricultural Credits Act (1923) recommends founding a Credit society side by side with a Supply society and making book debits where needed. Outside England, the general rule is to permit the supply of farm requisites. It is more rare to find a combination of credit and the general store. Herrick says that the general belief is that at the beginning, when the credit associations are weak and few in number, they should combine the purchasing of supplies and the distribution of products with the banking business, and that after co-operation has become firmly established in a locality, the credit associations should leave trading and industrial pursuits to other co-operative associations specially organised therefor, but so grouped around and identified with it that it may attend to their financial transactions.[1] Besides granting credit to members and receiving deposits, the Raiffeisen societies may undertake the purchase in common of farm supplies, machinery and breeding animals to be used in common, the sale in common of farm produce, and the purchase of tracts of land to be re-sold to members. The purchases do not include groceries or household necessities.[2] In Austria, credit societies buy machines for sale or rent, keep breeding cattle, or undertake to sell supplies of members or maintain warehouses for the storage thereof.[3] In Belgium, collective purchasing is a common

1 Rural Credits, p. 262.
2 Ibid., p. 289.
3 Ibid., p. 376.

practice with the local credit societies.[1] In Spain many of the credit societies, besides doing a loan and savings business, supply their members on credit with seed, fertilisers and other requirements for agricultural work and the raising of live stock.[2] The actualities of Russian life did not permit of each form of co-operative organisation keeping strictly within the limits of the scope it had set itself. The societies often over-stepped these limits, entering upon operations which were out-side their particular spheres of activities, and properly speaking should have been carried out by other societies. For instance, credit associations as a rule bought agricultural machinery, seeds and other things required by the peasants : in locali-ties where there were no consumers' societies the credit associations did the duties of the same.[3] The most striking feature of Japanese rural co-operation is the very common combination of various branches—purchase, sale and so on, and almost in every instance, also, credit in one and the same society. In German Raiffeisen societies, supply figures very prominently in the business done and answers for very much of the success achieved—but not, thus far, distribution. In India the law does not prohibit any combination of objects, so it becomes a matter for the judgment of the promoters, and the above quotations will show what is consi-dered legitimate. It is clear that the time to dogmatise has not yet arrived. The great advantages of cash sales must

1 Rural Credits, p 386. Mr. Strickland, however, writes : I think Belgian credit societies seldom do purchase ; the purchasing body is either a separate Co-operative Society, or it is a section of the Boerengild (Farmers' Union) which is a professional association and not a co-operative society.

Mr. Darling in Chapter I of his report says: For business purposes separate societies are doubtless an advantage, but in small villages they are difficult to organise, and certainly more expensive to run. Opinion is in fact agreed that, in the small village, it is impossible to keep bank-ing and trading apart. In Bavaria and in the province of Saxony, this principle is carried so far that few separate supply societies exist there at all. In Bavaria, it is the expressed aim of the largest local federation that when a competent local committee is available, the village bank should do everything. Some even run elevators.

2 Ibid., p. 418.

3 Bubnoff. p. 37.

not be lost through facilities for credit; a society holding large deposits from non-members should not risk these in store business. Where there is a combination of credit and trade, it is desirable to keep accounts separate.[1]

There is some risk of this question as to the permissible combination of objects in the same society being complicated by the introduction of a rigid system of classification and by the attempt to base a policy on it. In Ireland, the type of society which is at present making most rapid progress is the general purposes society; which usually begins with the supply of necessaries for the farm and the home, and proceeds to buy and ship its members' produce. In undivided Punjab, too, there was a distinct inclination to combine several objects in one society; for where there were few educated members, it was not always possible to have separate committees, so that separate societies would be separate in little else but in name. In these circumstances, a rigid classification would be of doubtful value. Where, as in Denmark, each local society confines itself to the

1 Where a primary society performs one or more functions besides the disbursement of credit. it is called a multi-purpose society. 'In recent years, as the result of a deliberate policy on the part of some State Governments, there has been a large increase of multi-purpose societies. Ideology and necessity have both, at different stages, induced adoption of this policy. Co-operative thought, seeking ways out of the relative stagnation of co-operative credit,came to recognise that members' economic and even social needs were not put away into and then brought out from a number of separate compartments; they made up a living and composite whole. The primary form of co-operative organisation, it was argued, should respond to the basic fact that credit was one of a number of important and inter-related needs. Only by attempting to subserve all, or as many as possible, of those needs could co-operative credit itself hope to survive and progress. The multi-purpose idea was thus born" (All-India Rural Credit Survey, vol. II. p. 219). The progress of multi-purpose co-operative societies is indicated by the figures given below:—

	All-India.	
	1946-47	1951-52
No. of Societies.	9,650	39,930
No. of members.	344,512	21,42,905
Working capital.	Rs. 178. 43 lakhs.	Rs. 1333. 71 lakhs.
Value of goods purchased.	Rs. 79. 13 lakhs.	Rs. 2260. 96 lakhs.
Value of goods sold.	Rs. 212. 08 lakhs.	Rs. 2785. 96 lakhs.

solution of only one special problem, classification is possible. There, if a new object is in view, a new society is formed. So that it is quite a common thing for a farmer to be a member of ten or more of these Co-operative Societies.[1]

The only restriction in India on the objects of a society is that these must be included in the economic interests of the members. This would seem to exclude the promotion of any religious object, and would also serve to exclude politics. In Belgium, the societies are frankly divided into Catholic and Socialist groups, and political parties follow the same lines, so that the societies feed the funds of the politicians. In Denmark, societies have kept strictly neutral and take no part as such in political or religious movements. In England, the same policy has been pursued, and undoubtedly has served to strengthen the hold of co-operation on the people. During the Great War, however, the Government of the day insisted on co-operative stores surrendering a portion of their stocks for the benefit of the un-co-operative public. The result has been to lead co-operators to revise their policy of non-intervention in politics, and definite efforts have been made to get into Parliament candidates for a co-operative party. As has already been stated, a further result of this change of policy has been promotion of an alliance between Co-operation and Labour. The gain to the Labour Party from such an alliance would be very great. The co-operators, with their four million families and capital of one hundred and fifty million pounds, possess great potential power. They have already given credit to strikers, providing food, and cashing investments of the Trade Unions. It is possible that they may be able to develop industries so that, in case of a national strike, they could keep the strikers provided with necess-

---

1 Faber. Co-operation in Danish Agriculture, pp. xii-xv. The writers of 'Rural Reconstruction in Ireland' remark (p. 163):—The history of co-operation in this industry (bee-keeping) indicates that separate societies for comparatively subsidiary industries do not succeed.

aries and save them from the pressure of poverty. Moreover, the co-operative movement in England possesses well organised Education Committees, Propaganda Committees, Women Guilds. etc., that can be used with effect to influence public opinion in the case of a national dispute. What the co-operators have to gain is not so clear, except some assurance against a repetition of the commandeering of their food stocks. It is not yet certain whether the alliance will prove permanent. The attempt to send to Parliament special co-operator members seems for the time being to have proved a failure. The whole idea of co-operation is opposed to strikes or strife, and the compulsory element in Trade Unionism is incompatible with the individualism of its new ally.

From the above it will be seen that while a society may have one object, the organisation may be put to quite a different use, which may or may not be compatible with the original object.[1] The stated objects of a society may similarly be very different from the advantages which the promoters hope will accrue from it. The main basis for the enthusiasm which co-operation gives rise to rests in the indirect results. Gide, for instance, writes:—All co-operative associations possess considerable value, they teach their members not to sacrifice any part of their individuality or their spirit of enterprise, but to develop their energies by helping others while helping themselves: to place the end of economic activity in the satisfaction of wants, not in the pursuit of gain; to raise the moral level by doing away with advertisement, fraud, the adulteration of food; to abolish all the methods by which men exploit their fellow men, and all causes of conflict.[2]

---

1 In Egypt, it is reported that Co-operative Societies were used by the extremist party for their political ends and then dropped when the political purpose had been served; the result was the failure of many societies.

2 Political Economy, p. 495.

It is this educational and moral value of the movement that attracts the patriotic and the public-spirited. Co-operation not only develops the latent business capacity of farmers, it produces leaders, it encourages the growth of the social virtues; honesty and loyalty become imperative; the prospect of a better life obtainable by concerted effort is opened up; the individual realises that there is something more to be sought than mere material gain for himself. Co-operation instils into men's breasts ideas of hope and progress and revolutionises their outlook on life. When, however the question is one of defining the objects of a society, it is advisable to exclude political and religious ends which may lead to misuse, and to concentrate on one or more of the many factors that lead to increase of wealth or on the removal of one or more of the many defects that lead to poverty. The objects of a society should be to give effect to the teachings of economics.

In order to complete this chapter it is necessary to reproduce the definitions in the Bombay Act (VII of 1925) which reflect the classification there adopted:—

(1) A "Resource Society" means a society formed with the object of obtaining for its members the credit, goods or services required by them;

(2) A "Producers' Society" means a society formed with the object of producing and disposing of goods as the collective property of its members and includes a society formed with the object of the collective disposal of the labour of the members of such society;

(3) A "Consumers' society" means a society formed with the object of obtaining and distributing goods to or of performing services for its members, as well as to other consumers and of dividing among its members and customers in a proportion prescribed by the rules or by the by-laws of such society the profits accruing from such supply and distribution;

aries and save them from the pressure of poverty. Moreover, the co-operative movement in England possesses well organised Education Committees, Propaganda Committees, Women Guilds. etc., that can be used with effect to influence public opinion in the case of a national dispute. What the co-operators have to gain is not so clear, except some assurance against a repetition of the commandeering of their food stocks. It is not yet certain whether the alliance will prove permanent. The attempt to send to Parliament special co-operator members seems for the time being to have proved a failure. The whole idea of co-operation is opposed to strikes or strife, and the compulsory element in Trade Unionism is incompatible with the individualism of its new ally.

From the above it will be seen that while a society may have one object, the organisation may be put to quite a different use, which may or may not be compatible with the original object.[1] The stated objects of a society may similarly be very different from the advantages which the promoters hope will accrue from it. The main basis for the enthusiasm which co-operation gives rise to rests in the indirect results. Gide, for instance, writes:—All co-operative associations possess considerable value, they teach their members not to sacrifice any part of their individuality or their spirit of enterprise, but to develop their energies by helping others while helping themselves: to place the end of economic activity in the satisfaction of wants, not in the pursuit of gain; to raise the moral level by doing away with advertisement, fraud, the adulteration of food; to abolish all the methods by which men exploit their fellow men, and all causes of conflict.[2]

---

1 In Egypt, it is reported that Co-operative Societies were used by the extremist party for their political ends and then dropped when the political purpose had been served; the result was the failure of many societies.

2 Political Economy, p. 495.

It is this educational and moral value of the movement that attracts the patriotic and the public-spirited. Co-operation not only develops the latent business capacity of farmers, it produces leaders, it encourages the growth of the social virtues, honesty and loyalty become imperative, the prospect of a better life obtainable by concerted effort is opened up; the individual realises that there is something more to be sought than mere material gain for himself. Co-operation instils into men's breasts ideas of hope and progress and revolutionises their outlook on life. When, however the question is one of defining the objects of a society, it is advisable to exclude political and religious ends which may lead to misuse, and to concentrate on one or more of the many factors that lead to increase of wealth or on the removal of one or more of the many defects that lead to poverty. The objects of a society should be to give effect to the teachings of economics.

In order to complete this chapter it is necessary to reproduce the definitions in the Bombay Act (VII of 1925) which reflect the classification there adopted:—

(1) A "Resource Society" means a society formed with the object of obtaining for its members the credit, goods or services required by them;

(2) A "Producers' Society" means a society formed with the object of producing and disposing of goods as the collective property of its members and includes a society formed with the object of the collective disposal of the labour of the members of such society;

(3) A "Consumers' society" means a society formed with the object of obtaining and distributing goods to or of performing services for its members, as well as to other consumers and of dividing among its members and customers in a proportion prescribed by the rules or by the by-laws of such society the profits accruing from such supply and distribution;

(4) A "Housing Society" means a society formed with the object of providing its members with dwelling houses on conditions to be determined by its by-laws,

(5) A "General Society" means a society not falling under any of the four classes above mentioned.

(6) A "Federal Society" means a society, not less than three fourths of the members of which are societies.

(7) A "Farming Society" means a society formed with the object of promoting development of land, and better methods of cultivation by means of improved seeds, manures, irrigation, bunding, tractor ploughing, gully plugging and soil conservation.

Explanation: A "Farming Society shall be of two classes—(i) a Better Farming Society (ii) a Co-operative Farming Society.

(1) A "Farming Society" shall be classed as a Better Farming Society if the predominant object is the application of improved methods of cultivation. A Better Farming Society includes a crop protection society. (2) A Farming Society shall be classed as a Co-operative farming society if the predominant object is the application of co-operative methods by the holders and in respect of cultivation (Bombay Act XIV of 1949).

The Registrar shall classify all societies under one or other of the above heads and his decision shall be final.[1]

A society formed with the object of facilitating the operations of any one of the above classes of societies shall be classified as a society of that class.

---

1 Provided that the Registrar for reasons to be recorded in writing may alter the classification of any society from one head to another head or from one sub-head to another sub-head.

LIABILITY

For some reason or other, there seems to be more unnecessary controversy over the question of liability of members of co-operative societies than over any other. The undoubted benefits of retaining unlimited liability in small rural credit societies are so marked that an impression has gained ground that unlimited liability was deliberately adopted in order to secure those benefits, while on the other hand, this principle is regarded as a stumbling block to the spread of co-operative credit in such countries as England and America. As an instance of the first, there may be quoted Mr. Wolff's remarkable statement that "Raiffeisen adopted unlimited liability in order that societies should stand on no etiquette with candidates, consider well whether such were eligible and unsparingly supervise them."[1] The simple fact is that when Raiffeisen founded his first societies, there was no privilege of limited liability accorded by the law. Of the second view there may be quoted, as in instance, Professor Carver's opinion that in the United States the principle of unlimited liability would absolutely prevent its being even seriously considered by fairly prosperous property-owning farmers.[2] It so happens that unlimited liability is the ordinary rule of business and of many social institutions and is only replaced by limited liability under special conditions and under special regulations. In actual practice, under wise restrictions, it possesses no serious dangers. As the late Professor Alfred Marshall pointed out, the term Joint-Stock Company in early times meant little more than association of a few members of the same family, of a few neighbours having intimate know-

---

1 Co-operation in India, p. 63. Sec Fay, Co-operation at Home and Abroad, p. 354 (2nd Edn). The German Law of 1867 prescribed unlimited liability for all societies. The law of 1889 permitted limited liability.

2 Principles of Rural Economics, p. 281 The fault would not lie with unlimited liability but with lack of mutual trust.

ledge of one another, who united their resources, or parts of them, for some venture. As a rule the venture was one which required a larger capital than any one of them possessed or else it involved risks, the whole burden of which was too great for any one of them to bear. The joint-stock principle in England was for some time applied almost exclusively to trade with distant lands[1] and later to exploit the mineral resources of the country. The wild speculation of 1700-1720 evoked a law, under which the privilege of trading in joint-stock could be obtained only by special charter. As each member of such a company was liable for all its debts, a prudent and responsible man was unwilling to take a share in it, even though it afforded reasonable prospects of high gains, unless he knew enough of his fellow members to be sure that he would not have to bear a great part of the burden in case of failure. The first steps towards legalising limited liability were taken timidly in England, and it was not until 1862 that the full privilege of limited liability was made general.[2] It soon became universal in regard to railroads and is gradually spreading in banking and manufacturing, and other industries. But nowhere can any person or body of persons claim limited liability in any enterprise without subjecting themselves to certain drastic restrictions embodied in the Company Law of the land. Limited liability, then, is a privilege of quite modern introduction, hedged round with conditions. These conditions are not suitable for such small societies as village banks or

1 The East India Company is a conspicuous example.

2 Marshall, Industry and Trade, pp. 312-331. Limited liability was allowed to a certain degree by an Act of 1825, and another of 1844. Liability may be limited by the amount of a share. A share may be fully paid-up, in which case the holder has no further liability except to refund dividends improperly paid, or only partially paid-up, in which case the remainder constitutes reserve liability. Or liability may be limited by the guarantee of members to pay a certain sum on liquidation in place of, or in addition to, share capital. The English Limited Liability Act of 1856, at first excluded Banking and Insurance Companies and the first India Act (XIX of 1857) was almost literally copied from it. Banking Companies in England were allowed limited liability in 1859, and in India in 1860. The English Law of limited liability was taken from the French Law.

even ordinary agricultural societies. Where a large amount of capital is required for any enterprise, it becomes impossible to confine the contributors to members of a small circle sufficiently intimately acquainted with each other's affairs to ensure that mutual trust which is essential when liability is unlimited. It is also true that where the shares in any enterprise are drawn from such a wide circle that mutual acquaintance of an intimate nature cannot be guaranteed, then unlimited liability is dangerous. Quite apart from what the law permits or does not permit, unlimited liability has been found to carry with it certain advantages of considerable importance in a Co-operative Society. In the first place, it is the cheapest form, it is the only security that can be developed in a very poor community, it is the only security on which working capital can be secured for the business.[1] Schulze-Delitzsch considered this unlimited liability indispensable at the beginning, in order to put all on guard in an association composed of persons not yet accustomed to forethought in financial matters. It would oblige each to watch his associates as well as himself. Later on, when the members have become better trained and acquainted with each other, and lenders appreciate their credit value, they might limit their responsibility.[2]

Actually this takes place automatically for as societies accumulate their own funds, shares and reserve, the unlimited liability becomes of decreasing importance, until the stage is reached when the society possesses all the funds its mem-

---

1 Sir H. Plunkett's Evidence before the House of Lords Committee "The moment you begin to say—Well after all, it only costs us so much if the bank bursts:—the bank will burst," Cf. also Carver, p. 281: Among a few very poor farmers, no one of whom owns more than a very few hundred dollars worth of property, and all of whom are about equally wealthy or poor, the principle of unlimited liability is essential in order to secure credit on favourable terms and is no serious drawback from the standpoint of the individual farmer. The old Transvaal & Orange Free State Laws did not allow limited liability to Co-operative Societies. The Union Act of 1922 legalised it.

2 Cf. Herrick, pp. 272-273: Experience has fully proved the truth of this. But by the time the members can limit their liability they have learned that there is nothing to fear from unlimited liability, wisely controlled.

bers require, borrowings from outside cease, and the members have no liability at all. Experience will show whether this will be accompanied by a weakening of the co-operative spirit.

Schulze-Delitzch and his immediate successors warmly advocated unlimited liability, but the national convention of his societies in Germany in 1894 passed a resolution favourable to limited liability and in 1896 declared that no distinction should henceforth be made in the matter.[1] The House of Lords Committee on the Thrift and Credit Bill regarded unlimited liability as a wholesome condition. It creates confidence among intending depositors, secures careful discrimination on the part of the managing members in the lending out of the bank's money to borrowers, and also secures some assurance that the money will be used for the purpose for which it is borrowed.

The value of the unlimited liability of a poor member cannot be gauged otherwise than by experience. Even Mr. Wolff, when giving evidence before the House of Lords Committee, agreed that the unlimited liability of borrowing member who had borrowed to the full extent of his credit was not worth much, and seemed to admit that the unlimited liability was practically only the liability of the benevolent man, the squire or some person of that kind, who gets nothing from the risk he runs. It will be remembered that Raiffeisen tried to keep the big landowner in the society, even though in such a case the poorer members are inclined to yield the control to the rich.[2] The disinclination of those better off to join credit societies is, of course, not unreasonable where the societies are not corporate bodies. The system known as unlimited liability in Germany is well calculated to frighten away the more wealthy farmers. There, a creditor may sue any member for his debt and recover from him and leave

1 Cf. Herrick, p. 275.

2 Herrick, p. 293.

COOP21

him to recover from the other members. In England, where there is unlimited liability without incorporation, the difficulty is surmounted by appointing trustees who control the funds, enter into legal contracts, etc., and so become the defendants in any suit. In India, societies are corporate bodies, and it is the society, and not the members personally, which enters into contracts. Accordingly, the unlimited liability of the members is, what is termed, unlimited contributory liability; that is to say, the members are liable to make contribution to any deficiency in the assets on winding-up. They must make good this deficiency somehow, even if the richer have to bear most of the burden; but as it is only liability for capital borrowed (in the way of loans and deposit) and as borrowing by the society is controlled by the members, the latter are in a position to control their own liability. It cannot be doubted that even in these circumstances the more well-to-do cultivators prefer to stand out, but experience shows that their fear is not well grounded. However, in India, we can hardly expect more public spirit than is shown in more advanced countries such as Ireland, where we read that when credit societies began to spread into districts where comparatively well-to-do farmers might have joined them, these men were frightened away by the prospect of being responsible to an unlimited extent for their neighbours.[1]

Where all the funds belong to the society (as share capital and reserve), there is no liability, and there is some danger that the ties which bind the members together will be loosened. The fact that all the members are jointly and severally

---

1 Rural Reconstruction in Ireland, p. 142. The distinction between limited and unlimited liabitity is clearly put in section 60 of the original Indian Limited Liability Act (XIX of 1857)—"In the case of a company being wound-up by the court or voluntarily, the existing shareholders shall be liable to contribute to the assets of the company to an amount sufficient to pay the debts and liabilities of the company, and the costs, charges, and expenses of winding-up the same, with the qualification that if the company is limited no contribution shall be required from any shareholder exceeding the amount, if any, unpaid on the shares held by him. This is reproduced in more elaborate form in the present Companies Act'. Cf. Section 156 (i) and (iv)

liable for outside debts involves many consequences (1) members must be selected, as obviously every one wants to be sure that a new member will be able to bear his share of the common burden; (2) members must be formally admitted, so that there will be some proof that they have accepted legal liability for the debts of the society as they stood on the date of admission; (3) members must be allowed to withdraw in case they find the society incurring a heavier liability than they desire to share in; (4) the liability of past members must continue for a period, so that the surviving members have opportunity to proceed to liquidation if they consider that, in consequence of withdrawals, the liability is becoming too great for them ; (5) members must not be allowed to transfer their share or interest to any one they please, but must only transfer to or through the society, for the survivors must be sure that the transferee is fit for his liability;[1] (6) the members must be able to expel any one whose liability is worthless, or who has pledged it in another society of unlimited liabilitv and to take action against defaulters by arbitration procedure ; (7) the list of members is the list of persons liable and so must be kept up to date ; the date on which any one ceases to be a member must be carefully entered, as from this date commences the period of liability of a past member ; (8) accounts must be strictly kept and duly audited so that the extent of the liability can be definitely established, and all members must have the right

1 A Joint-Stock Company can ordinarily only object to the transferee if the share carries a reserve liability ; if it is fully paid-up the holder has the right to sell freely. An extreme case will illustrate the point. Suppose a society or company, with a large reserve liability, is tottering towards bankruptcy ; in the absence of any restrictions the shareholders could sell to the nearest lunatic or minor for a nominal sum : as the lunatic or minor has no legal liability, the reserve liability would be worthless. There is a proposal under consideration to amend the Companies Act so as to empower Directors to expel a shareholder from a joint-stock bank for conduct prejudicial to the interest of the bank, such as defaming its credit, organising a run on it, etc.

to see the accounts,[1] (9) amendments to by-laws must require a considerable majority of the members, as an amendment may alter the liability; (10) the members in general meeting must settle the maximum liability they are prepared to undertake and (11) must have full power over the employment of funds (12) a reserve fund is desirable to protect the liability, as any loss will first fall on the fund, accordingly (13) a limitation of dividend is desirable so as to leave more for reserve; (14) members must have the right to secure independent inspection of the accounts and in the long run (15) to bring about the liquidation of the society and so definitely close their liability. In these days it is necessary to add that there must be no pressure from outside to make the society do what its members consider it unwise or dangerous to do, such as to admit members or elect the Committee on religious grounds. Where liability is unlimited, there must be intimate mutual knowledge between the members, and this can only be secured by confining selection to a small area. Where liability is limited, there is less need of mutual knowledge of each others' affairs, the area can be larger, the number of members can be greater and the whole transactions of the society can be carried on, on a grander scale. The need of the unselfish co-operative spirit diminishes, the bond becomes purely an economic one, and the educational and moral value of the society declines unless provision has been made for some compulsory contribution to an education fund, the management of which

1. A public company and Co-operative Society are compelled by law to have their accounts properly audited. A private firm is under no such obligation and it is very exceptional for a private firm to submit its accounts to an outside auditor.

will serve to remind members of their duty to the society.[1]

Unlimited liability is protected by the points noted above; in a credit society it is further safeguarded by the restriction of loans to productive purposes, so that the borrower will be financially stronger after expending the loan than before; by the insistence on sureties and on punctuality of repayment, by supervision of the expenditure on the object of the loan and the power to recall if the money is misapplied; and, finally, by the building up of a compulsory reserve which is declared indivisible, even in the event of dissolution of the society. Thus, if the expenditure of a sum borrowed yields less than itself in return, the loss will fall first on the member, secondly on his sureties, thirdly on the reserve, fourthly on the share capital, if any, fifthly on the unlimited liability of the members and finally on the creditors of the society. Experience shows that the protection of the latter is complete where there is effective machinery to enforce liability through prompt liquidation of bad

1. The Co-operative Planning Committee have observed that in most Provinces, however, unlimited liability has not been very helpful to the progress of co-operative credit. In most Provinces the trend of thought is in favour of limited liability. "We recommend therefore that except where unlimited liability has produced good results, the liability of the reformed and re-organised society should be limited. There may, however, be cases in which unlimited liability is more appropriate. For instance, the adoption of limited liability may prevent the benefit of co-operative credit being derived by persons of small means who have no tangible security to offer for loans. Similarly for Societies which cover one village and do not contain multiple functions, unlimited liability may be more suitable. Under these conditions we would recommend that a free hand should be allowed to the agriculturists to form their societies either on limited or unlimited liability basis". This recommendation was endorsed by the Fifteenth Conference of Registrars of Co-operative Societies (1947). In 1951-52, there were 30, 904 primary agricultural credit societies with limited liability as against 77,021 with unlimited liability. . The distribution for some of the States was as follows:—

	Limited Liability.	Unlimited liability.
Bombay	2,090	7,790
Madras.	99	16,616
U.P.	24,02	2,991
Mysore.	1,269	1,313

societies. But where defects are allowed to continue without the intervention of the Registrar, no safeguards, however carefully designed, will prevent disaster.

A further protection of the creditor was evolved in Burma by grouping societies into Guarantee Unions, each society in a Union guaranteed the loans of other societies from its financing agency up to an amount equal to its own borrowings of the previous year. This type of Union spread to some other provinces but it has not proved a success when put to the test. It broke down completely in Burma[1] and is a failure in the Central Provinces.[2] In Madras, the earlier unions were both supervising and guaranteeing but as a result of criticism, a new type of union developed which did not guarantee but only supervised. With the financing of societies it had no direct connexion.[3] But central banks still insist on applications for loans by affiliated societies passing through these unions who recommend at their discretion.[4]

---

1. Report of the Committee on Co-operation in Burma (1929) paras 52-54.

2. Annual Report for 1927.

3. Report of the Committee on Co-operation in Madras, p. 25, para 21.

4. In Bombay the machinery of supervision consists of taluka supervising unions, district supervision committees and the Provincial Board of Supervision with the Registrar as Chairman and eleven representatives of Societies as members of the Board. The supervisors are treated as temporary Government servants.

The All-India Rural Credit Survey Committee are of the opinion that "Supervision should be invariably treated as the legitimate function of Apex banks and co-operative central banks. They are well fitted for this role because of the intimate relations which may be expected to exist between them and the societies. Besides as financiers of the societies, they have to safeguard their own interests and ensure the soundness of the operations and solvency of the societies". All-India Rural Credit Survey—Vol. II. p. 462. In his recent report on Co-operation, Darling has differed from this view. "In the undivided Punjab, it (supervision) used to be the joint responsibility of the Provincial Co-operative Union and the Co-operative Department. A Central Bank, it was held, was justified like any other Bank in satisfying itself that the financial position of its clients was sound, but it was not its function to concern itself with their internal arrangements, or with any other aspect of their affairs" (p. 15)

INTEREST

The question of interest has always played an important part in the co-operative movement. In the industrial world, it has for long appeared to the workers to be unfair that the owner of capital, should receive not only a fair rate of interest, but also a profit in addition, and worst of all, a control over the industry. To their mind it seemed that a more just arrangement would be to give a fair interest on capital, and to distribute to the workers the profits accruing from their labour; while the control of the industry might well be partly, if it could not be wholly, in their hand. The English co-operative movement has undoubtedly achieved a great measure of success in this direction. Capital receives five per cent. interest and is completely ousted from control. Even although one significant result of the movement has been to place a little capital in the hands of each co-operator, amounting in all to a very large sum, the temptation to give capital a right to profit or control has been sternly resisted. Self-help and thrift have been the chief means whereby co-operation has won this success.

In agriculture, the conditions are so widely different from those surrounding other industries, that self-help and thrift alone could not help the cultivators to surmount their difficulties. The cultivator receives neither a weekly wage nor a daily profit. He has to wait several months for the return on his labour, and, except where mixed farming is the rule, he receives his income at only one or two seasons in the year. Further, although over a long period of years, a good average return is practically certain, he is constantly subject to the caprice of the weather and can seldom foresee, any distance ahead, whether the next harvest will be a bad one or a bumper. It is for some such reasons as these that the cultivator needs credit, and, needing credit, must pay interest. Now everywhere and in almost every country and throughout all

historical time for which records exist there is, and always has been, a class of persons who seek to make profit from the cultivator's necessity. The independent nature of his calling and his habitual neglect of accounts render him a peculiarly easy victim, while, wherever he possesses transferable rights in lands, the security thus available makes him a peculiarly safe victim. Of this, one result is that the small peasant proprietor is generally overburdened with debt, and another is that co-operative credit is now being widely, almost universally, advocated for him. The question of interest thus calls for somewhat detailed treatment. The subject is, unfortunately, for calm economic discussion, mixed up with religious doctrine, and, accordingly it may be of some advantage to begin with a brief historical survey.

It is not improbable that the objection to interest arose from the fact that in early times the investment of money for productive purposes was little resorted to. Even under the system of self-sufficing agriculture, the need for productive credit would be small. In every age, however, men are apt to have needs or desires beyond their immediate means to satisfy so that borrowings for purposes not ordinarily classed as productive would not be unknown. It is thus not impossible that the prohibitions against interest were aimed at unproductive expenditure.[1] Certain it is that as the opportunities for productive expenditure on a large scale have increased, the antipathy against all interest has been changed to antipathy against excessive interest or usury.

In ancient India, the Hindu law givers seem to have aimed at controlling the rate rather than at prohibiting interest altogether. Manu allowed 15 per cent. per annum on secured loans, and 24 per cent per annum on unsecured. The rate was to be higher for low caste people than for high caste. The highest limit to which interest was to be allowed to

1. Cf. Ashley : Economic History, Book I. Ch. III. also Taussig, Principles of Economics, Vol. II. p. 31.

accumulate was double the amount of the principal (Damdup-pat). Usury was condemned.[1] Compound Interest was forbidden; one shall not pay or receive an interest beyond the annual or what is unapproved or unaccumulated, not compound interest, nor periodical interest, nor that which is privately stipulated nor corporeal.[2]

Amongst Christians the precepts of Deuteronomy[3] have formed the basis of a long series of efforts, at first to suppress, and, later to control the taking of interest. For centuries the matter was regulated by the law of the church, and penalties of a religious nature were prescribed. So long as there was little opportunity for the accumulation of wealth and equally little scope for its investment, the law of the church sufficed to restrain Christians from practising money-lending. Agriculture was confined to producing the requirements of the household, it provided little material for trade. Trade and commerce were undeveloped, and credit, as now understood, was hardly known. Where funds were needed

---

1. Cf. Professor Kale's Indian Economics, pp. 442-443, 2nd Edn. See also The Cambridge History of India, Vol. L. The Vedic Indian was an inveterate gambler, and he seems always to have been ready to incur debt. As a result he might be reduced to slavery (p. 98)... We read of wife or children pledged or sold for debt.. In a Jataka tale, money-lending, trade, tillage and harvesting are named as four honest callings (218) ... According to Vasishtha, the rate of interest varied with the caste, the highest paying two, the next caste three per cent. per month, and so on. The same author prohibits Brahmins and Kshatriyas from being usurers (248) ... The old Sutra rule, confirmed by Manu, permits interest at 15 per cent. annually, but for men of low caste the interest may be sixty per cent., this is where there is no security. No stipulation beyond five per cent. per mensem is legal. Debts unpaid shall be worked out by labour by men of law caste. (287) Cf. also Samaddar's Economic Condition of Ancient India. The food offered by a usurer was forbidden to the Gods and also to the Brahmins.

2. English translation of Manu-Smirti by G. N. Jha, Vol. VIII. p. 153.

3. Deuteronomy, XXIII, 19-20. 'Thou shalt not lend upon usury to thy brother; usury of money, usury of victuals, usury of anything that is lent upon usury: unto a stranger thou mayest lend upon usury; but unto thy brother thou shalt not lend upon usury.' Under this precept, Jews could lend on usury to non-Jews and so became the money lenders of the Western world. Christians were not supposed to lend on usury to other Christians.

for the prosecution of any enterprise, they could be obtained by including men of wealth to share in the risk and the gain. So long as there was no fixed return promised for the use of the money, but an uncertain profit, there was nothing unlawful in lending. With the steady advance of civilisation, however, the law of the church alone seems to have been considered insufficient to prevent the spread of money-lending and there began a long series of efforts to check the practice by legislation; the first English Statute was enacted in A.D. 1488. This declared void all contracts for lending anything at interest, and rendered the parties liable to a fine of one hundred pounds. A few years later the penalty was altered to the forfeiture of one-half the money lent. This proving insufficient, it was enacted that all parties to money-lending "shall be set on the pillory, put to open shame, be half a year imprisoned and pay twenty pounds." All these measures failed to suppress usury, and, in consequence, it was next attempted to control the rate of interest. In 1546, usury was declared unlawful and the maximum rate was fixed at 10 per cent. In the ensuing years, this rate was reduced, until in 1714 it was fixed at 5 per cent; the penalty for disobedience was a fine of three times the money lent. Trade was rapidly expanding and it now came to be seen that these laws were a serious impediment, so in 1834 promissory notes and bills of exchange were exempted. In 1855, it was realised that the attempt to control the rate of interest was as much a failure as the attempt to suppress usury altogether, and the usury laws were repealed.[1]

The modern tendency now is to control the lender by refusing him the aid of the Civil Courts unless he complies with certain regulations. Usury, however, is still an offence punishable with imprisonment in Germany and many States

1. Cf. C. L. Collard : The Money Lenders' Acts pp. 1-2 : also Lipson's Economic History of England. In mediaeval times all money lender's property was confiscated on his death.

of America. Another tendency is to give the courts power to go behind a bargain agreed upon by the parties and to award such rate of interest as may seem reasonable. The English Money Lenders' Acts give effect to this, and the provisions designed to achieve this end have been repeated in India in the Usurious Loans Act.[1]

A further tendency, as in England (Act of 1927) is to make compound interest illegal.

The verdict of history seems to be that the attempts to suppress usury failed to achieve their object. The laws retarded economic development; they encouraged the hoarding of money and jewellery and led inevitably to schemes of systematic evasion. For instance, it is easier to punish a man than a corporation, so that a town might lend when a man could not, and instances of this frequently appear[2]. The laws broke down before the great expansion of industrial and commercial activities of the sixteenth and seventeenth centuries. One very important effect resulted which has left its mark on England and Europe to the present day. The prohibition applied only to Christians. The Jews were allowed to charge interest from gentiles and accordingly, they acquired a monopoly of financial business and

1. The economic depression of 1930 brought about a crisis in agriculture and Government enacted between 1930 and 1940 a series of laws to protect the cultivators. These included the scaling down of debts, regulation of the money lending business, reduction of the rate of interest, exemption from attachment of items of debtor's property etc.

Compound interest was prohibited in Assam, Bihar and Hyderabad. The maximum rate of interest was reduced to 9 per cent for secured loans in Madras, Bihar, Orissa, Bombay and Bengal, and that for unsecured loans to 12 per cent in Bihar, Orissa, Bombay and to 15 per cent in Madras and 18¾ per cent in the Punjab. The rule of damdupat was emodied in many Acts. The 'Rural Credit Survey' has revealed that "money lending legislation has had little effect on what the cultivator is actually charged as interest by the money lender. Proportion of borrowing at rates higher than the stipulated maximum was around 85 per cent in West Bengal, Bihar, Madras, Orissa and Hyderabad and about 65 per cent in Madhya Pradesh and Pepsu".—All-India Rural Credit Survey, Vol. II. p. 174.

2. Cf. Lipson, p. 530.

financial power which has placed them in a position of great advantage. In consequence, or perhaps it would more be correct to say in part consequence, they have incurred widespread unpopularity and have suffered cruel persecutions. The position is not without a parallel in the Western Punjab.

The experience of England suggests that the tendency of remedial legislation, which increases the money lender's difficulties and diminishes his profits, may be to send up the rate of interest in the ordinary money lender's transaction. This rate is always high. The lender has to run considerable risk, unless good security is forthcoming; he has to face constant difficulties in enforcing his contract and suffers frequent losses[1]. His interest charges must cover these risks, must allow for these difficulties and must recoup him his losses, and, perhaps, in addition, they should recompense him for the low esteem in which he is commonly held. A considerable portion of his business would not be effected by the introduction of any alternative system of credit, however widespread it might be. There will always be improvident people, expectant heirs, or even men in good business suddenly placed in a position in which they are in urgent need of ready cash but without a marketable security which they could offer to a bank. But from many of the evils attendant on money-lending the only practicable means of escape seems to be a sound system of thrift and co-operative credit, spread throughout the land and rendered available to all whose character and reputation show them to be deserving of trust.

From the above it will be seen that the attitude towards interest adopted by the mass of any people must have a very important influence on their material progress. In Europe, Jews amassed wealth, while Christians remained poor. In India, and probably elsewhere, Muslims have remained back-

1. Walsh. Usurious Loans Act. p. iii.

ward while other races have advanced. The refusal to take interest in any form entails, a complete abstention from banking and other transactions involving credit. Without trade and commerce on a large scale, no country, no people can amass wealth, and without wealth there can be none of the many amenities of civilisation requiring the expenditure of large sums of money. Many Muslims refuse to take part in trade, many are discouraged from practising thrift for lack of the incentive which exerts so powerful an influence amongst other peoples. A poor people cannot pay much in taxation and so cannot enjoy such things as free education, the benefits of large public works, such as metalled roads, railways, bridges and harbours, and without these they are compelled to waste time, energy and strength, which could be devoted to better ends. It is considerations such as these which have led some friendly critics to deplore the prospect that Muslims must always remain backward. Were this inevitable, then the future for a large portion of the population of India would indeed be gloomy, but it is possible, it is probable, that a solution will be found in co-operation. Co-operative credit seeks to remove the objections to interest by reducing it to the bare minimum required to attract the money needed, and when there has been accumulated a sum sufficient for the needs of any community, there no longer remains even this need for the payment of any interest at all. In several societies already a stage has been reached when it is no longer necessary to charge any interest on loans.

The co-operative movement deserves the close study of Muslims as it seems to offer the only solution of their difficulties in regard to interest. Laws controlling the rate of interest have not succeeded. The experience of other countries confirms that of England. In Austria, for instance, similar laws have proved in vain, the stricter the law the greater was the cunning of the money lender in circumventing them.[1] Of

1. Faber ; Co-operation in Danish Agriculture, p. 10.

Spain it is said that the law of 1909 is almost everywhere frustrated[1]. Were there any success to record, it would have been published abroad, but nothing of this nature is forthcoming. The only solution seems to be to confine the attack not against all interest but against excessive interest.

If this be accepted, the question arises "what is a fair interest"? Interest itself is not easy to define. It, in early days, meant any payment for the use of money, and the idea seems to have involved a fixed fee so that a share in any enterprise was not included. Later interest came to mean compensation for non-fulfilment of a contract, so that while a lender could not charge for money repaid within a stipulated time, he could receive interest for deferred payment. In the Usurious Loans Act it is defined (section 2, clause 1) to include the return to be made over and above what was actually lent whether the same is charged or sought to be recovered specifically by way of interest or otherwise. This definition limits the term "principal" strictly to the amount of cash or kind advanced: where a lender deducts the interest in advance and hands over the balance to the borrower, the principal sum is that which is handed over. In this sense, interest means not only the charge for the hire of the money (or wages of capital) but includes so much of the costs of borrowing as are paid to the lender. In a good co-operative credit society, these costs should be very small. Ordinarily by "interest" is meant that sum which will induce an owner of money to part with it temporarily under conditions which include a practical certainty of its return. The rate of interest, thus defined, is easily ascertainable with sufficient accuracy from the return accruing on government paper at the current price. Thus, if Government paper for Rs. 100, bearing interest at 3½ per cent

1. Ward : The Truth about Spain, p. 299. But in comparatively recent times the German Legislature has brought back the legal prohibition of usury. Usury is still regarded as a criminal offence, but the definition of what is usury is not strict. Ashley : Economic History, Book I, Ch. III.

is purchasable in the open market for Rs. 60, the rate of interest is $5\frac{5}{6}$ per cent. The rate, thus calculated, is usually the minimum rate at which money can be borrowed. It varies with the demand for money and the supply at any given time.

To this sum, in ordinary transactions, there must be added something in consideration of the fact that the security offered is not so good as that offered by Government. This addition is really of the nature of insurance against loss, and over a long series of transactions it should be sufficient to make good all losses due to defective security. It depends upon the security offered, i. e, upon the risk of lending.[1]

A further addition may have to be made for the cost of collecting the loan, especially if the borrowers do not repay punctually and willingly.

A further addition has to be made for the costs of the lender incurred in his business, e. g., office rent, clerk's pay, stationery, etc.

A further addition may have to be made if the demand for money fluctuates widely, if during part of the year some of the available money lies idle, earning no interest, then all the income required under the above heads must be obtained from the gross interest charged for the period during which it is being earned.

In the transactions of a village credit society these items have to be considered and the rate of interest has to be fixed so that over a series of years the society will suffer no loss. In so far as the interst charged just fulfils this requirement, the society is carrying out the co-operative principle of rendering services at cost. But prudence suggests that the rate of interest should be pitched a little higher than this, so that there will always be something in reserve. Practical expediency suggests even more, the borrower, it is urged, should be made to pay a little more than the cost of lending so that

1. Or in other words, on the confidence which the lender reposes in the borrowers or which the borrower inspires in the lender.

there will in time grow up from the surplus a common fund which may be regarded as the result of compulsory thrift.

The building up of a common capital from this source has the advantage that those who make most use of the society, and so presumably gain most from it, contribute in greater degree to the common fund. The main point to bear in mind is that, in co-operation, capital is only entitled to a fair interest and nothing more; it carries with it no right to any share in the control.

To complete the brief note on the history of usury laws, it may be of interest to note that, in India, by an Act of 1773, the maximum rate of interest was fixed at 12 per cent per annum, but by Act XXVIII of 1855 all usury laws were repealed and the interest agreed upon by the parties was made legally recoverable. The text is as follows :—

Section II. In any suit in which interest is recoverable the amount shall be adjudged by the court at the rate, if any, agreed upon by the parties; and if no rate shall have been agreed upon, at such rate as the court shall deem reasonable.

Section III:—Whenever a court shall direct that judgment or decree shall bear interest or shall award interest upon a judgment or decree, it may order the interest to be calculated at the rate allowed in the judgment or decree upon the principal sum adjudged, or at such other rate as the court shall think fit.

Section IV:—A mortgage or other contract for the loan of money by which it is agreed that the use or usufruct of any property shall be allowed in lieu of interest shall be binding upon the parties.

Section V:—Whenever under the Regulations of the Bengal Code, a deposit may be made of the principal sum and interest due upon any mortgage or conditional sale of land hereafter to be entered into, the amount of interest to be deposited shall be at the rate stipulated in the contract or, if no rate has been stipulated and interest be payable under the terms of the contract, at the rate of 12 per cent per annum:

Provided that, in the latter case, the amount deposited shall be subject to the decision of the court as to the rate at which interest shall be calculated.

Section VI:—In any case in which an adjustment of accounts may become necessary between the lender and the borrower of money upon any mortgage, conditional sale of landed property, or other contract whatsoever, which may be entered into after the passing of this Act, interest shall be calculated at the rate stipulated therein, or, if no rate of interest shall have been stipulated and interest be payable under the terms of the contract at such rate as the court shall deem reasonable.[1]

---

1. For a detailed study of the history of European views on interest, see 'English Economic History and Theory" by W. J. Ashley; Book I, Ch. III, and Book II, Ch. VI.

CONDITIONS NECESSARY TO MAKE A CREDIT SOCIETY CO-OPERATIVE

In paragraph 3 of their Abstract Report, the Committee on Co-operation in India (1915) give a statement of the conditions which they considered must be fulfilled in order that a society may be fully co-operative. The Committee were referring to credit societies only as they were chiefly concerned with the financial aspects of the movement. This statement is interesting as indicating the conception of co-operation held at the time when the Report was written. Since then agricultural co-operation has been thoroughly examined, and much fresh light has been thrown on its real position in rural economics. The Committee were rather obsessed with the Raiffeisen system of credit and gave far too little attention to co-operation as the only system of organisation suitable to agriculture. It is not necessary to be poor to derive benefit from co-operation, just as it is not necessary to be rich to derive benefit from a joint-stock company, under both systems the same amount of capital would be needed to achieve the same object. Agriculture differs from other industries in that it is carried on by a very large number of workers, each of whom controls a certain amount of capital independent of the rest. Every farmer is, to a certain extent, a capitalist, every farmer is also a labourer, a buyer and a seller, and he is expected besides to be a highly scientific exploiter of the soil. He cannot specialise in all these functions but he can combine with other farmers and share with them the expenses and advantages of specialists in each branch. Trade, commerce, finance, transport are all organised and between them will squeeze from the farmer all the profits of his industry, unless he too organises and thereby controls his own destiny. It is the rapid organisation amongst those with whom he deals that forces upon him the imperative need of organisation with his neighbours. The Committee on Co-

operation produced a report of great value on Raiffeisen credit, and it is to Raiffeisen credit that the following pages especially relate :—

"*The theory underlying co-operation is that weak individuals are enabled to improve their individual productive capacity, and consequently their material and moral position, by combining among themselves and bringing into this combination a moral effort and a progressively developing realisation of moral obligation. The movement is essentially a moral one and it is individualistic rather than socialistic. It provides as a substitute for material assets honesty and a sense of obligation and keeps in view the moral rather than the material sanction.*"

This refers particularly but not exclusively to Raiffeisen societies. It was originally their particular aim to bring help to the impoverished, the neglected, the forgotten provided that they could show that they were honest and had productive work offering, on which to employ themselves. The Government of India recited that the object of co-operative credit societies is to substitute for a number of individual credits which are weak because they are isolated, a combined credit which is strong because it is united. These will be small and simple credit societies for small and simple folk with simple needs and requiring small sums only.

The unlimited liability of the very poor may not realise much on selling up but they do not want to be sold up and the aversion to this is an added stimulus to honesty.

The moral element has been strongly emphasised by the Rochdale school. "Co-operation is a faith as well as a practice"; but the hard-headed weavers took care that their practice was not unbusiness like. Co-operation must always be a serious business undertaking, and business success must be assured before higher results can be looked for.[1] It is

1. Cf. Rural Reconstruction in Ireland, p. 254. For an example of moral benefits, see Rural Denmark, p. 211.

interesting to recall that, in England, the earliest conflict with authority occurred over that one of their articles of association which provided that a portion of their profits should every year be devoted to education. This article has been conceded in section 34 of the Act, which permits of part of the annual profits being devoted to education, medical relief, etc.

The movement is anti-socialistic, but the socialists have now withdrawn their opposition. It was at one time opposed to State aid, until experience showed that agriculture is not likely to make much progress unless stimulated from outside.[1] It is opposed to State control and sets up self-help and self-control as its aims. It has from the first appealed to self-help and inculcated self-dependence.

"Hence the first condition obviously is that every member should have a knowledge of the principles of co-operation if this co-operation is to be real and not a sham."

Elsewhere the Committee write that "most of the faults found in societies are due to the lack of teaching of true co-operative principles, and the importance of proper teaching

---

1. The Second Five Year Plan lays down that "the aim is to build up a co-operative system in which the village community is the vital social and economic unit and leadership comes from the people. The essential function of co-operative credit, marketing and other institutions which are to be built up in partnership with the State as recommended in the Rural Credit Survey will be to assist the development on a sound and business-like basis of an expanding co-operative sector." Second Five Year Plan-Draft Outline. p. 71.

The State Co-operative Banks' conference held in May 1957 recommended that the State's contribution should be given direct to the apex bank; but indirect participation should be encouraged at the intermediate and primary levels. Sir Malcolm Darling has commented that "of the many developments contemplated by the Plan, the most debatable is the direct participation of Government as a shareholder in the credit side of the movement. At the apex level there is much to be said for this, given the paramount necessity to increase agriculture production and to supply the cultivator with sufficient credit for the purpose. But at the primary level as far as thrift and credit society is concerned, every experienced co-operator must view it with concern, since it is too likely to undermine the independence and self reliance essential to the strength of the movement at its base." (Sir Malcolm Darling—Report on certain Aspects of Co-operative Movement in India, p. 2-3).

the power given in the by-laws to expel members for dishonesty and bad characters were frequently admitted into societies. It is now, however, generally realised that, as the members are all potential borrowers, generally character is an important factor in success; and that where liability is unlimited, it is essential to make sure that candidates for membership are not likely to make this dangerous. The importance of the moral element varies with the liability.

This condition is secured in the Act by the necessity of formal admission of members [see definition of member, section 2 (c)], by rules under section 43 (d) governing admission and under section 43 (m) providing for expulsion, by sections 14 (2) (b) and 22, regulating transfer of shares of members, living and dead. Most Provinces have rules under section 43 (c) providing that societies shall make by-laws dealing with expulsion of members and transfer of shares and all English societies registered under the Industrial and Provident Societies Act must as a condition of registration determine in their by-laws whether shares are transferable and provide for the consent of the Committee.

"As regards the dealings of the society, it should lend to its members only."

This is provided for in section 29. Obviously, it is little use making elaborate provision for the selection and retention of honest members if loans can be made to non-members not subjected to the same process. This is the principle of all co-operative associations, the confining of benefits to the members and must be the object of all societies (see section 4). No one would advocate that members should undertake unlimited liability for the debts of non-members; but, where the object is not the provision of credit, there is less objection to dealings with these.

"The loans must in no circumstances be for speculative purposes, which, so far from encouraging thrift and honesty, have exactly the opposite effect. Loans should be given only for productive purposes or for necessaries which, as essentials

of daily life, can fairly be classed as productive. The borrowers should be required to satisfy their fellows that they are in a position to repay the loans from the income that they will derive from their increased productive capacity, or that by the exercise of thrift they can effect a margin of income over expenditure which will suffice to meet the instalments of their loans as they fall due"[1]

This condition is, of course, borrowed from ordinary rules of sound banking. A banker must know his client, his work and his needs. Says Rae, "You will have to satisfy your mind in every case, before parting with the bank's money that it is required for legitimate business use and not for rash and foolish speculation .....You will do wisely to make it a rule absolute whenever you are invited to lend the bank's money in any shape or for any purpose, to satisfy your mind that the means will exist in available form, to repay the money when due,......when a man comes to you for a loan, unless the transaction is clearly in the direct line of his business, you have a right to know for what purpose the advance is wanted"

British banks claim that they provide sufficient sound financial facilities and are not shy in making advances on the strength of their customers' known ability and integrity. The larger banks lend far more than the small country banks, they absorb and provide adequately for most of the needs of the large farmer who can offer satisfactory security. Their branch managers are permitted to rely upon their personal knowledge of the character, habits, reputation and capacity of the farmers in their vicinity and they do in fact advance large sums for current business purposes on this

1. I have not discussed credit here as I have already issued a long pamphlet on the subject, based on the opinion of many writers. Prof. Gide is very clear; see also Herrick, Seligman, Carver, Nicholson, Dupernex, Huebner and others.

personal knowledge without taking banker's security.[1] In the Report on Rural Credit in Ireland, the Provincial Bank submitted in evidence that it supplied deserving farmers with every suitable accommodation that could prudently be given on business lines. The qualifying adjectives, of course, are significant, and on the interpretation based upon them rests the controversy as to whether joint-stock banks finance agriculture adequately.

There should be no hesitation in enforcing the strictest compliance with this principle; if a banker regarding only the interests of his bank, treats it as a rule absolute, a Co-operative Society, bound by its objects to promote the interests of its members, must be still more strict. The underlying principle is clear. The employment of the loan becomes a pledge for its own value. The bank is not formed to practise lending for lending's sake...its object is to provide credit for certain approved transactions only, transactions which promise to repay the outlay with interest, to improve the position of the borrower and which are appropriate to his case (Wolff). The creditor's real security consists not in the material assets of the members but in the ability and desire of the members to put the borrowed money to productive uses and to repay the loan out of the profits made thereby. Each loan should mean so much earning capacity, so much producing power for the individual borrower......the security in fact lies in the use of each loan for genuine productive purposes (Committee, paragraph 2.) The Government of India are equally emphatic. "Co-operative credit should provide cash only for productive or provident outlay. It is not its object to supply capital for fixed outlay and it is not to provide money for anyone who asks for it. Its real object is to provide agriculture with ready money for the one purpose of making such agriculture more profitable. There

1. Dampier Whetham: Politics and the Land; and Walter Leaf: Banking.

must be a good chance, a moral certainty of the money lent reproducing itself with increase."

In spite of the obvious soundness of this condition, it is the one most frequently broken. The Act itself is silent on the objects for which loans may be granted but most provinces have rules under section 43 (c) requiring societies to make by-laws defining the purposes for which advances may be made and Local Governments may make rules under section 43 (0).

Example of rigid restriction on the objects of loans are provided by the Land Improvement and Agriculturists' Loans Acts.

In India a very serious, even a dangerous, relaxation has already been permitted in the addition of necessary purposes, but in this same paragraph the Committee insist that "loans must be given only when they are really necessary and desirable".[1] Even at the risk of over-elaboration the following extract from Mexon's "English Practical Banking" is added, "a banker will wish for information as to the amount of advance required, the purpose for which it is wanted, the length of time for which it is required, and the security which is to be given for it. Banking advances should be for commercial purposes, as an addition to working capital" (what are here called "productive purposes").

Bankers do not necessarily make special enquiry into the object of the loans, but it is the duty of managers to keep themselves conversant with the circumstances of their clients and to satisfy themselves that the money is required for some legitimate business purpose. It is here that banking differs from money-lending, and it is the neglect of this rule that makes the ordinary money lender such a curse to society.

"When a loan has been given, it is essential that the Committee of the society and the other members should

---

1. Cf. Wolff:—Necessity alone will not justify loans if there is no certain prospect of recovery.

exercise a vigilant watch that the money is expended on the purpose for which the loan was granted."

This is merely an adaptation of a general precaution in banking. "If you trust people with your money, you have a right to at least a general notion of what they are doing with it" (Rae). It is useless making rules as to the objects for which a loan may be granted if no steps are taken to see that the money is really devoted to the object approved. The insistence on supervision by the Committee is characteristic of co-operative credit but Government also directs its revenue officers to see that loans under the Land Improvement Act are spent on the particular works for which they were sanctioned.[1]

Rules may be made under section 43 (g) and (o). This insistence on supervision by the Committee on the expenditure of the sum lent is necessary in the interest of outside depositors and under the Friendly Societies Act, a credit society is not allowed to accept deposits from non-members unless its rules provide for this supervision. Prior to 1898 such deposits could not be accepted at all, but in that year Sir Horace Plunkett succeeded in getting an Amending Act passed.

"If it (the money) is improperly applied, it should be at once recalled."

This is merely an insistence on honest dealing. The same rule applies to loans under the Agriculturists' Loans and Land Improvement Acts. Mr. Wolff adds: 'a man misapplying a loan would, of course, not be allowed to borrow again. In fact he would be got rid of as being untrustworthy." Loyalty to the society must be maintained and this kind of mis-

1. For a Canadian view, see the Saskatchewan Report, p. 49:—'There exists a sharp difference of opinion as to whether, after loans have been advanced, inspection should be tolerated to determine whether the loans had been so expended, and if not, whether they should be recalled. The general attitude is clearly indicated in the reply made by a farmer : I do not think the farmers would like it, but I am satisfied it would be to their interest.

conduct should be a ground for expulsion [Section 43 (m)]. There should be a clause in the bond embodying this principle which should also be included in the by-laws and may be made a rule under section 43(m).

"It is further advisable to add to the general supervision of the society the special supervision of individual members, by taking personal sureties in the case of each loan. In the event of any default by the borrower an instant demand should be made on these sureties."

No well-managed bank would think of advancing a loan without security, but in co-operation the primary security for all loans should be personal. Says Rae, "never make an advance to any one except on security of approved quality and adequate value......no one is as safe without security as with it......the only rule which insures safety in every case is never to make any advance without security......The proper time to stipulate for security should be before the opening of an account, not afterwards......The chief objectors to giving security for advances are those who have none to give......no doubt there is security of a kind in honest intention, but honesty itself may be overthrown by unforeseen disaster...... no amount of honesty will shield a man from misfortune."

Government has no doubt upon this point, it insists on security for all loans advanced to agriculturists. Some provinces insist (under section 43(c)) on by-laws providing for security and rules may be made under section 43(o).

With the exception of the Italian "loan of honour" there

is, says Herrick,[1] no co-operative credit society in Europe which does not demand of borrowers as safe security as is exacted by an ordinary bank. The question is more fully discussed in the notes under section 43(o). The old English country private banks used to lend to farmers on the basi, of their character, instead of being too exacting in the matter of visible securities which the borrower might have found it difficult to provide. When the big London companies bought up the private banks, it is complained that they insisted on commercial security and that advances to small agriculturists declined.[2] This charge has since been strongly refuted and it is clear that, in the effort to secure good business, branch managers have wide powers to lend on personal knowledge.

Mr. Darling[3] found that while in Germany, as in India, the primary security for the loan is the character of the borrower, and the further security taken is personal surety, a mortgage is often taken instead. Raiffeisen is said to have been not opposed to the use of mortgage as a collateral security, but Mr. Darling found a distinct tendency to regard the pro-

---

1. Rural Credits, p. 467. Mr. Strickland writes : "The Italian loans of honour without security, which have been quoted in support of an experimental laxity, are loans given to non-members by those urban banks in which a share is of a large amount beyond the means of the poor : the device is non co-operative, and it would be simpler to issue shares of low value for those who need them" (Studies in European Co-operation, Vol. I. p. 159). Mr. Darling, however, writes : "Loans are made to members and non-members alike. . . . Honesty of character is the sole security. . . . there is a special committee in touch with the poor, to enquire into the circumstances of each case. It is characteristic of the Peoples Bank at Bologna that it still maintains this most humane element in its business. Even if the amount advanced is small, it is a constant reminder to the bank of its ideals' (Co-operation in Germany and Italy, p. 135).

1. Cf. Pratt. Small Holders, p. 172. Green : The Awakening of England, p. 338.

2. Co-operation in Germany and Italy, pp. 24-25.

perty as more important than character.[1] He notes that there are no rural credit societies for people who have no land and quotes Bubnoff as authority for the statement that in Russia there were no agricultural labourers as members of credit societies as the articles of association forbid advances to members who have no immovable property. In the Punjab and other Provinces of India, there are hundreds of such societies for landless menials and many are highly successful.

The above are the conditions relating to loan transactions. In all cases they merely embody the most elementary principles of sound banking and those who advocate elasticity take upon themselves a heavy responsibility. Any relaxation must result in a marked rise in the rate of interest to cover the extra risk involved. Cheap credit must be secured credit. The interests of depositors alone demand the adoption of the precautions referred to.

"In the more general matters of the society's business there should, of course, be a Committee of management with a president and a secretary; all of whom, except those who perform purely clerical duties and have no voice in the management, should be members of the society and give their services to it gratuitously."

It is, perhaps, the most curious omission from the Act that there is no provision for the constitution of a Committee and for giving it a legal status. The Act, however, (cf. section 22), assumes the existence of a Committee and most Provinces

1. "Co-operative practice has, by and large, persisted in this bias towards ownership as the criterion of creditworthiness inspite of periodical exhortations to the contrary. This substantial deviation between co-operative principle and co-operative practice is only partly explained by factors such as the influence which the bigger landowner tends to wield over the rural society or the failure of honorary direction and supervision and the consequent need for co-operation to look out for some more tangible form of security than character or capacity"—(All India Rural Credit Survey: Abridged Report, p. 114). The Rural Credit Survey has indicated that the co-operative credit system in most States shows a bias against consumption credit on the ground that its primary preoccupation is 'productive' finance (based on land ownership) and to that extent the system is bound to be automatically biased in favour of the big and large cultivators.

direct under section 43 (c) that one shall be provided for in the by-laws. Local governments may make rules under section 43 (g). The question is fully discussed under this section.

Gratuitous services were insisted upon by Raiffeisen and at first by Luzatti, but not by Schulze-Delitzch; latterly there is a growing tendency towards payment. The Madras committee do not recommend payment of punchayetdars, except in respect of clerical work undertaken by them. The secretary is everywhere frequently remunerated.[1] The Madras Committee condemn the basing of his remuneration on profits or loans granted, as was the practice, as this provides a temptation which should be avoided.

As has been already shown, the control must rest with the members and hence the Committee must be appointed by them. A society with a Committee partly appointed ex-officio or by nomination cannot be called co-operative. The Italian law insists that all officers be members[2].

"At the same time the ultimate authority should never be delegated to the office-bearers, but should be retained in the hands of the members, who must continue to take a practical interest in the business of the society. With this object the constitution should be purely republican; each member should have one vote and no more in the general meeting."

See section 13—

This section states the principle of equitable association which is the foundation of all true co-operation. It distinguishes it from co-partnership. The powers of control vested in the general meeting should be known to the members. If

---

1. In Denmark the president of the Co-operative Bank receives a small salary. Howe : Denmark, p. 56. The Committee on Co-operative Law has suggested that the Secretaries of large-sized primary agricultural credit society, primary marketing Society, Co-operative processing Society etc. should be paid officers and that they should be trained in co-operation.

2. Cf. Herrick, p. 351—"The board of directors may engage a manager and a cashier who upon appointment, must enrol as members".

this dictum is to be carried out literally, the societies must be small, in a society with large membership, it is not practicable for each and every member to take part in the control, and there is a tendency for this to pass into the hands of an active minority. Undiluted co-operation, says Herrick[1], cannot be practised except by relatively small groups of persons.[2]

Most Provinces by rule under section 43 (c) insist on the by-laws dealing with general meetings and rules may be made under section 43(f).

"*All business should be transacted with the maximum of publicity within the society. For example, there should be kept in some place open to the inspection of every member a list showing the loans issued to every member, the names of his sureties and the amount of the loan still unpaid, and each member should be required to know generally how this account stands: general meetings should be frequently held at which the accounts and affairs of the society are fully discussed and explained.*"

The Committee only refer to publicity within the society. If all members are equal and, especially, equal in liability, all have an equal right to know of the society's transactions. The only exception refers to members' deposits. Members

---

1. Rural Credits, pp. 459-60.

2. The Second Five Year Plan has laid down that "the jurisdiction (of the co-operative society) should on the one hand be large enough to make it an efficient unit and on the other, it should not be so large that it becomes difficult to secure among members the knowledge, the sense of mutual obligation and concern for rehabilitation of the weaker sections of the community and the intimate contact between the committee of management and individual families without which co-operation cannot make a real impact on rural life".

The 15th Conference of Registrars of Co-operative Societies (1947) recommended that the area of operations of a primary multi-purpose co-operative society should ordinarily be the village; that in tracts where villages are very small there may be one primary society for more than one village and that the operations of a marketing society should cover all the villages from which produce is brought to the market.

The Co-operative Planning Committee in 1947 recommended that attempt should be made to bring 50 per cent of the villages and 30 per cent of the rural population within the ambit of the reorganised primary societies within 10 years.

must not know who is a depositor and what his deposit amounts to. Under the English Act, no one except an officer of the society has the right to inspect the loan or deposit account of any other member without his consent in writing. Mr. Wolff also excludes the list of maximum credits to be allowed to each member (see notes to section 43 ⟨o⟩) but the Committee on Co-operation require this to be fixed at the annual general meeting.

Publicity[1] without the society is usually insisted upon by law. Sir F. Nicholson errs, perhaps, on the side of exaggeration when he writes, "Publicity is, in every European country, the first requirement : everything must be laid open to the public view". If the society is well managed, members honest, and repayment punctual, then publicity enhances the credit of the society. Rules should be made under section 43⟨h⟩ ⟨q. v). Publicity requires the maintenance of proper books of accounts (section 43⟨g⟩) which accordingly must be prescribed (section 43⟨h⟩), ⟨cf. section223, Indian Companies' Act of 1956⟩

"*The express object of the society should be development of thrift among its members, with the hope too, that this idea of thrift may spread in the neighbourhood. To effect this object loans must be given only when they are really necessary and desirable. Further the development of thrift and of a proprietary interest in the society should be aided by efforts to build up as soon as possible a strong reserve fund from*

1. Publicity, of course, is very necessary if liability is limited but it is not always popular. In Austria, 'while the farmers are willing to trust the society with their savings many are still unaccustomed to banking usages, and, when they want credit, they prefer to go secretly to their friends or the money lenders rather than let their neighbours know that there is need of assistance (Herrick, p. 367) The late Sir W. T. Russell, giving evidence before the House of Lords Committee, ascribed the small amount of members' deposits in Ireland to the fact that the Irish peasant does not like his neighbours to know that he has money, and he does not trust any committee. Sir Rider Haggard quotes one authority who declared as his deliberate opinion that tenant farmers will not co-operate, because, co-operative accounts being open to inspection, they fear that their landlords might raise the rents if it were found that they were prospering (Rural Denmark, p. 190).

profit. The society must also be encouraged to obtain as much as possible of its capital from the savings which its teaching and examples have brought about among its members and their neighbours."

The promotion of thrift is prominently put forward in the preamble to the Act. As the Committee say: "the object of co-operation is as much to encourage savings as to grant loans on reasonable term." The principal direct objects are thus: (1) the encouragement of thrift, (2) the accumulation of loanable capital, and (3) the reduction of interest on borrowed money by a system of mutual credit. See notes to Preamble, where it is shown that a member acquires a right (cf. section 12) to deposit his savings in the society and hence there must be control over deposits from non-members (sections 30 and 43(e)). The formation of reserve fund may be prescribed by rules under section 43(p), a minimum is ensured by section 33.

The question of thrift lies at the very foundation of the problems of Indian poverty. Thrift depends upon foresight, abstinence or self-control, and security of life and property: and so can only be found in a settled educated community. No panacea for the troubles of India will be of any lasting value unless there be thrift. The great wealth of England is largely due to centuries of thrift: the poverty of India's masses is largely due to its absence in the past. Thrift supplies the capital for all enterprise. The capital for agricultural needs and agricultural improvements must, in the main, come from the savings of rural communities.[1] That the value of thrift is securing more general recognition is made clear by the reports of Registrars.

---

1. Cf. Irish Report on Rural Credit, p. 8 Cf. also Herrick, p. 393. "Co-operative credit has obtained a firm foot hold in Switzerland, but the idea was not introduced on account of any lack of banking facilities.... the little republic is frequently referred to as the only country in which farmers have too much credit... necessity did not bring co-operative credit into being in Switzerland. It was started because of its moral effect in teaching farmers to be their own bankers and to be mutually responsible for one another".

It is a defect in the Indian system that provision has been made for a distribution of profits on shares : but it should be noted that the Committee contemplate the profit going to reserve and generally the profit should and probably will be limited to a fair interest on capital, the maximum being the same as the rate charged on loans to members. In actual practice, the primary credit societies of India give away very little indeed in dividends. Sound guidance has made good the defect in the Act.

With all these must go the elementary business principles of honesty, punctuality, proper accounts, diligence and payment when due. To ensure all these there must be adequate control from within, increasing vigilance and supervision by the office bearers and a continuous effort by members in learning the principles of co-operation, in meeting frequently in watching others, in working hard and observing thrift, and in punctual repayment of their own loans as they fall due."

From the above it will be understood that strictness is essential. Mr. Wolff says: "there should be inexorable strictness with regard to the observance of rules and undertakings not only as to repayment of loans": and in another place, "rigorous insistence upon prompt payment is another characteristic feature. Harsh as it may appear to people new to such banking, it is necessary and represents sound policy." Also "checking and controlling is the fibre which runs through the entire organisation."

The Committee omitted a very characteristic feature of Co-operative Societies, namely, the absence of any limit to the number of members. Such a limit is prohibited in Germany, Belgium, etc., and is penalised in England. It may be provided for by rules under section 43 (q) (see notes thereunder). It is one of the points distinguishing a Co-operative Society from a Joint-Stock Company (see notes to Section 4).

and from a society "established with the object of facilitating the operations of such a society" (e.g., a Central Bank).[1]

Mr. Cahill finds the following principles now practised in all Raiffeisen societies in Germany :—

1. Limitation of area to secure personal knowledge (cf. section 6 (1) a).
2. Low shares (cf. section 43 (e).
3. Permanent indivisible reserve fund (section 33).
4. Unlimited liability (section 4 (2).[2]
5. Loans only for productive or provident purposes (section 43 (o).
6. Loans only to members (section 29).
7. Credit for relatively long periods, with payment by instalments (section 43 (o).
8. Determination every year by the members of each society of—
   (i) the maximum credit of individual members :
   (ii) the maximum total of saving deposits receivable :
   (iii) the maximum total of loans that may be taken up (section 30).

(See section 43 (e), Cf. Committee's Report, paragraphs 52 and 59).

---

1. It is essential to the co-operative idea that the matured society should keep its ranks open to the weaker brethren who are still without, and never pursue strength at the price of their injury or neglect (Fay).

2. Cf. Smith Gordon: Co-operation for Farmers p. 33. Both the Raiffeisen and the Schulze societies were originally established on the basis of unlimited liability. The Raiffeisen societies, with unimportant exceptions, have preserved this feature to the present day, but the Urban societies have adopted the more suitable form of limited liability... When the pioneers began their work, they had no option in this matter, for the law did not allow co-operative associations to limit the liability of their members. Also p. 113:—Unlimited liability is contrary to the inclination of the times, and we find that it is, in fact, gradually being replaced by the more modern system of limitation by shares. A question, which with Raiffeisen was undoubtedly one of principle, has come, now that co-operative organisation is widespread and well understood, to be regarded as one of expediency: and, from this point of view, the victory rests, except perhaps in some exceptionally backward districts, with limited liability.

9. Absence of profit seeking, dividends if paid being limited as a maximum to the rate of interest paid by borrowers for loans (section 43 (r)).
10. Office holders (except secretary), not paid for their services.
11. Promotion of the moral as well as the material advancement of members.

As will be seen from the references, some of these principles have been embodied in the Act while the others are left to be dealt with by rules under section 43. They will be discussed in their proper places.

Finally there may be included here the Rochdale society's advice to members, chiefly remarkable for common sense. Failures in non-credit societies in India are usually directly traceable to neglect of one or other of these dicta.

ROCHDALE SOCIETY'S ADVICE TO MEMBERS[1]

1st.—Procure the authority and protection of the law by enrolment.

2nd—Let integrity, intelligence, and ability be indispensable qualifications in the choice of officers and managers and not wealth or distinction.

3rd—Let each member have only one vote, and make no distinction as regards the amount of wealth any member may contribute.

4th—Let majorities rule in all matters of Government.

5th—Look well after the money matters. Publish fraud when duly established by the immediate expulsion of the defrauder.

6th—Buy your goods as much as possible in the first markets: or if you have the produce of your industry to sell, contrive, if possible, to sell it in the last.

7th—Never depart from the principle of buying and selling for Ready Money.[2]

1. From "Industrial Co-operation" by Miss Catherine Webb.
2. This abolition of sale on credit proved a powerful stimulant to thrift. People had to save to buy, before they could enjoy.

8th—For the sake of security always have the accounted value of the 'fixed stock' at least one-fourth less than its marketable value.

9th—Let members take care that the accounts, are properly audited by men of their own choosing.

10th—Let committees of management always have the authority of the members before taking any important or expensive step.

11th—Do not court opposition or publicity, nor fear it when it comes.

12th—Choose those only for your leaders whom you can trust, and then give them your confidence.

The Rochdale plan related primarily to stores and is thus prescribed by the late Mr. Holyoake. "It was that the profits made by sales should be divided among all members who made purchases, in proportion to the amount they spent, and that the shares of profits coming due to them should remain in the hands of the directors until it amounted to five pounds, they being registered as shareholders of that amount. The stores would thus save their shares for them and they would thus become shareholders without it costing them anything, so that if all went wrong they lost nothing, and if they stuck like sensible men to the store, they might save in the same way another five pounds, which they could draw out as they pleased......The merit of this scheme was that it created capital among men who had none, and allured purchasers to the store by the prospect of a quarterly dividend of profits upon their outlay. Those who had the largest families had the largest dealings, and it appeared as though the more they ate the more they saved."

Raiffeisen slightly modified this by keeping all profits in an indivisible permanent reserve. He thus also created capital among men who had none but it belonged to the society and not to the individual members.

THE CO-OPERATIVE SOCIETIES ACT, 1912.

(II OF 1912)

CONTENTS.

Sections. Page.

Preliminary.

1. Short title and extent 92
2. Definitions 100

Registration.

3. The Registrar 104
4. Societies which may be registered ... 109
5. Restrictions on interest of member of society with limited liability and a share-capital ... 122
6. Conditions of registration 125
7. Power of Registrar to decide certain questions ... 129
8. Application for registration 130
9. Registration 133
10. Evidence of registration 134
11. Amendment of the by-laws of a registered Society 135

Rights and liabilities of members.

12. Member not to exercise rights till due payment made 138
13. Votes of members 141
14. Restrictions on transfer of share or interest ... 147

Duties of registered societies.

15. Address of societies 150
16. Copy of Act, rules and by-laws to be open to inspection 151
17. Audit 152

Sections Page

Privileges of registered societies.

18. Societies to be bodies corporate 160
19. Prior claim of society 162
20. Charge and set-off in respect of shares or interest of member 166
21. Shares or interest not liable to attachment ... 168
22. Transfer of interest on death of member ... 169
23. Liability of past member 174
24. Liability of the estates of deceased members ... 177
25. Register of members 178
26. Proof of entries in societies' books ... 179
27. Exemption from compulsory registration of instruments relating to shares and debentures of registered society 181
28. Power to exempt from income-tax, stamp-duty, and registration-fees 183

Property and funds of registered societies.

29. Restrictions on loans 192
30. Restrictions on borrowings 202
31. Restrictions on other transactions with non-members 205
32. Investment of funds 209
33. Funds not to be divided by way of profit ... 213
34. Contribution to charitable purpose ... 221

Inspection of affairs

35. Inquiry by Registrar 224
36. Inspection of books of indebted society ... 227
37. Cost of inquiry 230
38. Recovery of costs 231

Dissolution of society

39. Dissolution 231
40. Cancellation of registration of society ... 234

Sections — Page

48. Effect of cancellation of registration ... 234
42. Winding-up 238

Rules

43. Rules 249
    (a) maximum share holding 253
    (b) forms and conditions for registration ... 255
    (c) procedure for by-laws 256
    (d) admission of members 263
    (e) raising funds 269
    (f) general meetings 279
    (g) the committee 282
    (h) accounts and audit 292
    (i) returns to Registrar 297
    (j) certifying copies 298
    (k) register of members and shares ... 298
    (l) disputes 299
    (m) withdrawal and expulsion of members ... 319
    (n) interest of deceased members ... 324
    (o) loans 326
    (p) reserve funds 353
    (q) limit of number of members 362
    (r) profits and dividend 366
    (s) appeals. 371
    (t) liquidator 372

Miscellaneous.

44. Recovery of sums due to Government ... 380
45. Power to exempt societies from conditions as to registration 382
46. Power to exempt registered societies from provisions of the Act 383
47. Prohibition of the use of the word "co-operative" 384
48. Indian Companies Act, 1882, not to apply ... 385
49. Saving of existing societies 386
50. Repeal 387

ACT No. II OF 1912

PASSED BY THE GOVERNOR-GENERAL OF INDIA IN COUNCIL.

(*Received the Assent of the Governor-General on the 1st March, 1912*)

An Act to amend the Law relating to Co-operative Societies.

WHEREAS it is expedient further to facilitate the formation of Co-operative Societies for the promotion of thrift and self-help among agriculturists, artisans and persons of limited means,[1] and for that purpose to amend the law relating to Co-operative Societies: it is hereby enacted as follows:—

The Bombay Act has the following preamble:—

"Whereas it is expedient further to facilitate the formation and working of Co-operative Societies for the promotion of thrift, self-help and mutual aid among agriculturists and other persons with common economic needs so as to bring about better living, better business and better methods of production and for that purpose to consolidate and amend the law relating to Co-o, erative Societies in the Presidency of Bombay..... it is hereby enacted......"

The Madras Act (VI of 1932) repeats this.

---

1. If the Act is amended the preamble should run 'promotion of thrift, mutual help and self-help among agriculturists, artisans and other persons with needs in common.' (This old suggestion has now only historical interest).

Preliminary

Short Title and Extent.

1. (1) This Act may be called the Co-operative Societies Act, 1912: and

(2) It extends to the whole of British India.

Prior to 1904, Co-operative Societies could not be organised under a recognised legal form except under the Indian Companies Act. They could not obtain the same legal status and privileges as commercial companies without submitting to the restrictions generally considered necessary for their proper control. Moreover, it must be remembered that, without registration, no binding force could be given to rules, and hence discipline could not be enforced. Not only that but associations of more than ten persons for the purpose of banking are illegal unless registered under the Companies Act (see notes to sec. 4), so that there could be no question of starting unregistered societies. The Co-operative Credit Societies Act (X of 1904) was accordingly passed "to encourage thrift, self-help and co-operation." It was founded on the English Friendly Societies Act but conferred corporate existence which that Act does not do. In this and some other respects it followed the Industrial and Provident Societies Act under which nearly all the non-credit societies are registered. The latter Act, however, insists on limited liability.

It is important to remember that Co-operative Societies are companies which would ordinarily (and can if the members so desire) come under the ordinary company law of the land, but they base their claim to exemption from the Companies Act on the ground that their object is not the acquisition of gain by way of profit for themselves or their members. The Government of India stated that "the object of this measure (of 1904) is to provide the requisite legal basis for the establish-

ment in India of Co-operative Credit societies... Legislation is called for not only in order to lay down the fundamental conditions which must be observed but also with a view to giving such societies a corporate existence without resort to the elaborate provisions of the Companies Act"......" The bulk of the non-credit Co-operative Societies recognised by the law (of 1912) are placed on a footing similar to that of joint-stock companies and it will be necessary in practice to see that the Act is not utilised for the benefit of societies which are not really of a co-operative character."[1]

Bombay yields a very interesting point of law under section 3(e) of the Land Acquisition Act, a society registered under the Co-operative Societies Act of 1912 ranks as a society for the purpose of compulsory acquisition of land. But the Bombay Act of 1925 repealed the India Act of 1912 in so far as it applies to the Bombay Presidency (section 73) and therefore it has been held that societies registered under the Bombay Act of 1925 are not societies registered within the meaning of the India Act of 1912 and so are not companies within the meaning of section 3 (e) of the Land Acquisition Act and therefore are not entitled to the benefit of this Act, (Appeal 272 of 1929, decided 7th July 1930, by Madgavkar and Barlee, JJ).

---

1. Act of 1912 has been repealed in its application to Burma, Bombay, Madras, Bihar, Orissa, Bengal. These States have their own Acts now. Mysore and Travancore have also enacted their Co-operative laws.

Section 100 (3) of the Government of India Act 1935 empowered the Provincial Legislature to make laws relating to co-operative societies by placing the subject in paragraph 33 of List II in the Seventh Schedule annexed to this Act, Many States, as mentioned above, have availed of this power. Under Article 256(3) of the Constitution of India the legislature of any State specified in Part A or Part B of the First Schedule has exclusive power to make laws for such State with respect to any of the matters enumerated in List II in Seventh Schedule. The subject "Co-operative societies" is included in paragraph 32 of this list.

Promotion of thrift:—Thrift: frugality, economical management, economy (Century Dictionary). This object necessitates the right of a member to deposit his savings in his society (sec. 12 notes), this right is of the very essence of a credit society and it is extremely doubtful if it could be restricted by any rule or order of a Local Government. As the society may not be able to find useful employment for all the savings offered, it must give priority to deposits from members over those from non-members (sections 30 and 43 (e)). Similarly as Central Banks, as a condition of registration, must be established with the object of facilitating the operations of primary societies, they also must give preference to deposits from such societies over those from outside, even though this entails diminution of income. The question of greater or less profit must not be an argument with any Co-operative Society except in so far as it touches the economic interests of the members.

The promotion of thrift also renders desirable a savings deposit system: for these societies will furnish to agriculturists a safe method of investing small savings in an institution at their own doors, which is managed publicly by persons whom they know and for objects which they can see and test. Such savings have proved here and elsewhere good lying money. The Committee considered that when once well started, the Co-operative Societies will be used by agriculturists for their savings far more freely than any Government Institution can ever hope to be used and that their use will be attended by far greater economic advantages to the country than any likely extension of Post Office

Savings Banks[1] (para 51). Unfortunately non-members depositing in Co-operative Societies have to pay stamp duty on withdrawals, from which they are exempt when dealing with the Post Office Banks. Mr. English when Registrar of Burma wrote: "If co-operation can lessen the waste of capital by inculcating thrift, it will be a boon to the country but it must be continually borne in mind that the provision of funds to assist waste or even merely further to raise the standard of living by enabling the culivator to spend the difference in interest payment in luxury and amusement, is greatly to be deprecated......In Burma, borrowing is mostly due to habit and want of fore-thought and not to necessity...... the mere provision of cheap money through Co-operative Societies or otherwise tends, owing to the existing state of public feeling, to induce waste of income rather than thrift." The importance of encouraging thrift can hardly be exaggerated as Mr. Dupernex says: "The great lesson of thrift will require a great deal of teaching in India where the soil is so fertile and nature so bountiful that the peasant, however badly off he may find himself in the present, never loses hope in the future. He knows that if his present harvest fails, the chances are that in another few months the land will again give forth its abundance. Improvidence is often laid to his charge, but the feelings that some observers attribute to this cause may, perhaps, with equal truth, be traceable to a deeply-seated faith in the future."[2]

---

1. The Post Office Savings Banks were originally designed to serve only the towns but in recent years these have been extended to rural areas. The total number of Post offices with Savings Banks in India was 9,090 in 1949 of which 6,401 were in rural areas and the balances of accounts in these rural Post Offices were Rs. 6,314 lakhs. Total small savings collection during five years ending 1956 amounted to Rs. 235 crores out of which the Post Offices accounted for Rs. 102 crores.

2. Dupernex pp. 88-89.

Credit societies of the Raiffeisen type throughout Europe have a more active existence than those in Ireland for one or both of two reasons: they are the great centres of thrift for the rural population, and they have trading powers. The funds accumulated by thrift enable them either locally (as in Italy) or through a federation (as in Austria) to capitalise and finance the trading side of the movement.[1] The tendency to withdraw capital from the land instead of investing more in it is remarked upon by many writers. It used to be one of the grievances of intelligent Irishmen, like the late Sir Horace Plunkett, that the deposits of the local Savings Banks were transferred to London and so lost to the Island which has never enjoyed a plethora of money. If Indian agriculture is to be supplied with all the capital it can usefully employ, this must in large measure be accumulated by the thrift of co-operators.[2]

1. Rural Reconstruction in Ireland (p. 147).

2. Sir Malcolm Darling has expressed regret at the growing neglect of the thrift aspect in the primary credit societies "Nor is it (thrift) ever used in speaking of the credit society and it has even dropped out of the society's official designation. Originally following the Raiffeisen model on which these societies are based, they were called 'Thrift and credit' societies and were registered accordingly. In at least one State, perhaps too in others, they are now registered simply as agricultural credit societies. 'What's in a name' some may say with Juliet but what slips out of speech soon slips out of thought' (Report on Certain Aspects of the Co-operative Movement in India. p. 12) (1957).

The All India Rural Credit Survey has emphasised that 'it is in our view important to recognise that the need to make rural savings possible (e.g. by economic development and credit extension) is much more important than to render rural savings available (by mobilisation)'. 'The most effective way, therefore, of ensuring that the co-operative agency does attract savings is so to strengthen it that it inspires confidence and so to extend and diversify its activities, especially in the aspect of economic significance that local interest and enthusiasm are created. The relative absence of these factors and of course the absence of other conditions basic to the creation of savings, have resulted in the co-operative credit movement in India being more a movement for lending money than of attracting deposits. What the Maclagan Committee said years ago is still true.' (All India Rural Credit Survey-Report of the Committee of Direction. Vol. II. p. 487).

Along with the promotion of thrift must go the checking of improvident lending (Wolff).

Self-help—One of the great lessons learned in Europe is that in the long run the farmers succeed best when they help themselves. Whenever they become dependent on the Government they keep looking to it for more aid. It is believed to be a correct general statement that rural credit is on the strongest basis in those countries where it has been developed most completely without government aid Government should do nothing that can effectively be done by individual farmers or by the farmers collectively through voluntary effort.[2]

Persons of limited means—Miss Webb (Industrial Co-operation) writes: Co-operation is essentially the outcome of poverty and need, and has achieved its greatest success amongst the moderately poor. The condition that co-operators should provide their own capital is apt to prove a hindrance to the extension of the movement to the very poor and, hence arises the hitherto unsolved problem of how to bring its benefits within their reach. The nature of the surroundings in which the lives of the poorest are passed; the lack of training and of education—in the real sense of the word-from which they suffer, makes it difficult for them to realise the benefits of co-operation....... The system of obtaining goods on credit is one which has unfortunately become very common among these people, owing largely to the uncertain nature of their surroundings, and the burden of debt often brings with it an obligation to continue dealing with a particular tradesman.

It must be admitted, too, that Co-operative Societies have in many instances ceased to recognise their obligations towards the very poor or have failed to realise

2. American Commission on Rural Credit Observations, Part I, pp. 13, 27.

that the special needs of poverty call for special methods.

The above extract is applicable to Indian conditions. It has to be remembered that the conditions in which the very poor live tend to develop the meaner side of their character and accordingly it is unusually difficult to inculcate ideas of honesty, fair dealing and thrift.[1]

In Burma, the members of societies appear to be disinclined to admit people of the poorest classes, landless labourers, fishermen and pedlars.[2]

The fact that persons of limited means deserve most consideration involves as practical results that small loans to small people must be given preference over large loans to those more well-to-do and that the savings of the poor members must be accepted even if it necessitates returning the large deposits of the prosperous.

At the same time it must be remembered that heavy debt may reasonably be considered by a society as justifying a refusal to admit a candidate into a credit society. Major Jack, for instance, mentioned that of the cultivators of Faridpur, there are six per cent whose debts are far too large for any co-operative movement safely to deal with[3]; and of Finland it is said that experience has shown that the very poorest do not join Co-operative Societies, in particular such as do not have a permanent place of residence or fixed income.[4]

1. "The class-wise distribution of co-operative finance is preponderantly in favour of the large cultivator as compared with the medium and small. Whereas the average borrowing from co-operatives per family in the case of big cultivators was Rs. 21.0, the relevant figures in the cases of the medium and the small cultivators were only Rs. 4·7 and Rs. 1·9". This is largely the result of co-operative credit being based on land as the main form of security.

2. Annual Report, 1921. 1921. p. 6.

3. Economic Life of a Bengal District, p. 111.

4. Co-operation in Finland, p. 12.

Similarly of Europe Herrick points out that Peoples' Banks of the Schulze-Delitzch and Luzatti type generally speaking are not small institutions for feeble folks. The American enthusiasts who are hoping to improve the condition of the shifting and thriftless population by means of co-operation will be disappointed to find that this has been accomplished in Europe only in spots where the work is sustained by the ceaseless and unrequited toil of philanthropists devoting themselves to the arduous tasks as priests of their mission.[1] Undoubtedly the feeling of economic distress has up to the present been one of the invariable conditions of the co-operative movement[2] but as attention is turned from credit to other applications of the co-operative principle, it becomes clear that one essential requisite is the marked consciousness of a common interest in the accomplishment of some definite purpose.[3] This may be improved credit, cheaper supplies or better prices for produce, or any other common economic need, the point is that while co-operation is almost the only avenue of escape from poverty, its benefits are equally open to others who are willing to work for the common good of all. It would, perhaps, be an improvement if this reference to persons of limited means were omitted as has been done in the Bombay and Madras Acts.[4]

---

1. Rural Credits, p. 459.
2. Cf. Co-operation in Finland, p. 8. 2.
3. Vogt, p. 235.
4. The Bengal Act of 1946 refers to "persons of moderate means". The Bihar and Orissa Act of 1935 specifically iincludes 'agriculturists and other persons with common needs". The U. P. Act refers to "agriculturists, artisans and persons of limited means.' Co-operators in India have realised that with the expansion of the scope of the co-operative movement it would be advisable to drop altogther this limitation about persons joining the society. The Second Five Year Plan lays down that 'from credit, co-operation has to extend to a number of other activities in the village including co-operative farming', hence 'every family in a village should be menber of at least one co-operative society.'

The restriction of the benefits of the Act to persons of limited means is aided by the provisions as to maximum interest of members (sec. 5), by the power to fix a maximum loan (Sec. 43 (o)) and by rules relating to profits (Secs. 33, and 43 (r)). As persons of limited means have no money to spare, loans for unproductive purposes must be rigidly restricted.

2. In this Act, unless there is anything repugnant in the Definitions subject or context :—

(a) "by-laws" means the registered by-laws for the time being in force and includes a registered amendment of the by-laws :

Burma omits "and includes................by-laws."

(b) "Committee" means the governing body of a registered society to whom the management of its affairs is entrusted :[1]

Bombay has: "the Committee of Management or other directing body to whom etc."

Burma has "direction" for "management."

(c) "member" includes a person joining in the application for the registration of a society and a person admitted to membership after registration in ac-

1. The English Acts define Committee as the committee of management or other directiing body of a society.

cordance with the by-laws and any rules: (under sec. 43 (d).

(d) "officer" includes a chairman, secretary, treasurer, member of Committee, or other person empowered under the rules or the by-laws to give directions in regard to the business of the society.[1]

The Madras Act, quite unnecessarily adds president, vice-chairman and assistant secretary.

(e) "registered society" means a society registered or deemed to be registered under this Act:

Burma has: "Co-operative Society" means a society registered under this Act.

(f) "Registrar" means a person appointed to perform the duties of a Registrar of Co-operative Societies under this Act: and

(g) "rules" means rules made under the Act.

(a) *By-laws*—Correspond to the articles of association of companies (Cf. definition of articles—Indian Companies Act of 1956 sec. 2 (2)). The by-laws, which include the objects (see notes to sec 4) completely define and restrict the society's activities. The Act itself does not empower a society to make by-laws. It must have them before it is registered (sec. 8 (3)),

1. The Bengal Act adds manager and "auditor elected from among the members."

and it may amend them (Sec. 11). The Local Government may by rule under section 43 (c) empower a society to make by-laws. A by-law is a standing rule of a corporation or society, made for the regulation of its internal organisation and conduct: it is distinguished from a provision of its constitution in being more particular and more readily altered (Century Dictionary).[1]

(b) *Committee*—A committee is not prescribed by the Act. In Acts of other countries it is. For instance, the New York State Law provides that every such corporation shall be managed by a board of not less than five directors. The South African Act goes further and fixes the minimum at three, the quorum at not less than half the number and prescribes meeting at least once a month. In India, rules may be framed, if necessary.

(c) *Member* :—In the Indian Companies Act, a member is one who subscribes to the memorandum and who agrees to become a member, he must take not less than one share. (See notes to sections 5 and 12). Members may be registered societies (Section 6).

Madras has : "financing bank" means a registered society, the main object of which is to lend money to other registered societies.[2]

Bombay by a curious oversight has the definition : "Society" means a society registered or deemed to be registered under this Act. The result is unfortunate as

---

1. In case of a conflict between a provision of the Act or the rules and a by-law the by-law cannot prevail (Ramsubramaniam V. Salem Urban Bank—A. I. R. 1945, Mad. 434).

2. Bengal has a similar provision but the Bihar Act of 1948 goes further and includes under 'a financing society' 'a registered society the main object of which is to make advances in cash or kind to other registered societies or to agriculturists who are not members of registered societies or to both such societies and agriculturists" (Sec. 2. (c)). The Madras and Bengal Acts authorise the financing bank to inspect the books of a registered society indebted to it.

the Act, as here, proceeds to prescribe "societies which may be registered" and that the Registrar if satisfied may register the society and so on. Further, it ignores the very important point that unregistered Societies are subject to the Indian Companies Act.

Includes a person—according to section 3, clause 39, General clauses Act (X of 1897) "person" shall include any Company or Association or body of individuals, whether incorporated or not.

In the original bill the second clause ran "persons elected by the members for the time being", the substitution of the word "admitted" does not do away with the necessity of selection, election precedes admission (cf. 42 (d)).

"It is important that members should be eligible for admission by election only so as to secure that mutual confidence upon which successful co-operation must depend.........The selection must still be personal and made by the society: no person can claim admission under any automatic rule and the important principle that the new member must be accepted by the old ones or their representatives is maintained."[1]

As a matter of fact, this element of selection is not confined to Co-operative Societies. Even in the case of Companies, Directors may decline to register any transfer of shares, not being fully paid-up, to a person of whom they do not approve. They generally merely consider the question of the uncalled liability, but joint-stock banks usually provide in their articles for more strict election. In Co-operative Credit Societies, careful selection is a vital principle as it is the possible borrowers who are being selected. In stores societies dealing for cash only, it is less important. The

1. Government of India Resolution.

importance of selection varies to a large extent with the liability of members and with the objects of the Society. In a general supply (stores) society, selling only for cash, it is insignificant. The Indian Companies Act adds the words "and whose name is entered in its register of members," and the entry in the register is prima facie proof of membership but (see Sec. 25 and notes) this does not apply to Co-operative Societies: membership has to be directly proved. The English Act follows the Companies Act.

(d) *Officer*—refers to those dealt with by rule under section 43 (g). It does not include an auditor.

For the sake of convenience clause 29, section 3 of the General Clauses Act may be repeated here:

Local Government—Shall mean the person authorised by law to administer executive government in the part of British India in which the Act or Regulation containing the expression operates, and shall include a Chief Commissioner.

Registration

The Registrar

3. The Local Government may appoint a person to be Registrar of Co-operative Societies for the Province or any portion of it, and may appoint persons to assist such Registrar, and may, by general or special order, confer on any such persons all or any of the powers of a Registrar under this Act.[1]

1. Sec. 10 of the Bengal Act authorises the Government to confer all or any of the powers of the Registrar upon any person to assist the Registrar or upon any co-operative society in respect of any other co-operative society which is a member of the co-operative society first mentioned. The Bihar Act has a similar provision with regard to a co-operative federation or financing bank.

The last three and a half lines are new to the Act of 1912, and were unfortunately omitted from the Burma Act of 1927 : generally speaking, the Registrar exercises over societies the power of a Court over Companies under the Indian Companies Act. The Burma Committee recommended that the Local Government should have restored to it the power embodied in the last three and a half lines.

Under this Act the Registrar is constituted the very foundation of the movement. It is left entirely to his discretion to register or to refuse to register a society (cf. section 9), and the by-laws and every amendment of them require his approval (cf. sections 9 and 11). Thus on him rests the responsibility of seeing that a society starts under conditions as favourable as he can make them. In order to ensure that wise rules are carefully observed he is given unlimited power of inspection and audit (cf. sections 17 and 35).[1] He controls the power of a society to make loans to, and receive deposits from, a non-member (cf. sections 29 (1) and 30), and has a voice in the investment and disposal of its funds (vide sections 32 (1)d and 34). Finally, he has full discretion, subject to the right of appeal to the Local Government or such Revenue Authority as it may nominate, to order the dissolution of a society (cf. section 39) and to appoint a liquidator to wind it up. These are extensive powers and in some quarters there

1. Under Sec. 57A of the Bihar Act (X of 1944) the Registrar has the power to recover the debt by distraining while in the possession of the defaulter (a) any crops standing or ungathered on the holding of the defaulter (b) any crops which have been grown on the holding of the defaulter and have been reaped or gathered and are deposited on the holding or on a thrashing floor.

Sections 25 and 26 of the Bengal Act gives the Registrar power to dissolve and reconstitute the Managing Committee of a society for mismanagement and to appoint a person to manage the society for a period of one year and to arrange for the constitution of a new committee within this period.

is an inclination to object to them being centred in a government official. But it cannot reasonably be disputed that the control of the movement by official Registrars has been a success, and has not in any way tended to paralyse progress. Only one who devoted all his time to mastering the many problems that come up for solution could deal at all adequately with the duties of the post. Undoubtedly India has been saved many failures and many years' delay by the present system. The officially controlled movement has so far reached only a fraction of the villages, but where it has not penetrated co-operation has not gained a footing. Nowhere have those who clamour for the elimination of official control proved their ability to do without it.

Registrars are not, and are not intended to be, merely registering officers: they are also expected to provide supervision, assistance, counsel and control. Government alone was in a position to supply the knowledge and organisation necessary to start the work and Government alone is able by its association with the movement, to create the outside confidence necessary to give it stability. It is necessary that Government, through its own and the societies' staff, should continue the co-operative education of societies long after they are registered. The fact that societies, though primarily self-contained and self-governed, are subject to supervision by Government officers, has an important effect in attracting public confidence, and the benefits thus accruing to the country at large fully justify the expenditure of public money on official supervision......... Perhaps, in no direction has this been better illustrated than by the decline of deposits in joint-stock banks and their increase in State-supervised institutions.

The movement must in its essence be a popular one and nothing should be done to weaken the feeling among co-operators that it is based upon self-reliance and

independence. Government, therefore, in the best interests of the movement, must not allow co-operation in this country to become an official concern managed by State establishment (Government of India Resolution). The Registrar is primarily responsible for seeing that a new society is being formed on a sound basis; he must not confine himself merely to seeing that the applications for registration satisfy the conditions of the Act and the Rules (Committee's Report). Madras has embodied this in a rule (cf. next section).[1]

It is worth noting that Registrars need not necessarily be officials of Government, and the practice is growing of appointing non-official helpers as Honorary Assistant Registrars with certain powers of a Registrar.

In England the only qualification obligatory for a

---

1. In his note of dissent to the report of the Co-operative Planning Committee Prof. H. L. Kaji has advocated that the powers of the Registrar should be reduced and the movement be progressively deofficialised. "More than forty years have passed since the movement was launched under State auspices and official control and the success that was hoped for has not been attained. The Registrar far from being merely the registering officer as in the case of join-stock companies was to be friend, philosopher and guide and soon constituted himself into a trustee of the societies......And, yet, despite this complete control on him rested not the responsibility of failures ....The solution lay not in the further tightening of the control and in the appointment of ever more and more officials but in the decontrolling of the movement so that with the absence of unnecessary interference, a greater sense of responsibility would be evoked amongst the members who by co-ordinated efforts and guidance from their own federations would secure better results." He has further pointed out "Nowhere does the Co-operative Societies Act of 1912 confer these powers (organisation, supervision and periodic inspection) on the Registrar and yet he performs these functions and exercises, if he chooses, a great measure of control even over the day to day management also."

Pleading for a thorough revision of the Co-operative Act II of 1912 as archaic, V. Ramdas Pantalu said in 1941 that "the Co-operative Societies Acts are all drawn up with the Registrar as the centre of the picture and not the Society. "If our Co-operative Acts are framed on the basis that co-operation is a movement of the people and not merely a department of administration, they will help to promote the initiative of those for whose benefit the movement is intended."

Registrar is 'that he be a barrister of not less than 12 years' standing. However, besides registering, he also prepares and circulates model forms of accounts, balance-sheets, and valuations and collects and publishes information as to statistics useful to the societies. All salaries and expenses are paid by the Treasury. He is not necessarily versed in co-operative principles and hence perhaps those lapses which Mr. Wolff castigates him for. In India, the Committee on Co-operation place a heavy burden on the Registrar (para 192), he must be continually studying co-operative literature, which is now most extensive: he must make himself acquainted with economic conditions and practices both throughout India and in his own province: he must know the principles and methods of joint-stock banking: and must examine the systems of developing thrift and inculcating co-operation which have been tried in other countries. He is also head of a teaching establishment and must devise effective means for impressing a real knowledge of co-operation on the bulk of the population. He has further to control a large staff, to draft model by-laws and rules, to collect statistics and write reports, to advise Government on various subjects and to keep in close touch with the higher finance of the movement as managed by Provincial Banks and Central Banks.[1]

1. The Co-operative Planning Committee (1946) have observed that "the Registrar should not only be a man of outstanding ability but should also be temperamentally suited for the work of running a popular movement of this kind. Before he assumes charge of the post of the Registrar he should undergo a thorough training and should work for at least two years as Deputy or Joint-Registrar. In our opinion his tenure should be for about ten years". pp. 155

In 1957 Sir Malcolm Darling found that "it is still the rule rather than the exception for Registrars to be appointed without any training at all". He has recommended that no one should be appointed Registrar without at least a year's training and Registrars should not be transferred under at least three years.

4. Subject to the provisions hereinafter contained, a society which has as its object the promotion of the economic interest of its members in accordance with co-operative principles, or a society established with the object of facilitating the operations of such a society, may be registered under this Act with or without limited liability: Societies which may be registered

Provided that unless the Local Government by general or special order otherwise directs :—

(1) the liability of a society of which a member is a registered society shall be limited ;

(2) the liability of a society of which the object is the creation of funds to be lent to its members and of which the majority of the members are agriculturists, and of which no member is a registered society, shall be unlimited.

Burma has this proviso in a separate section 10, but in section 2 has "if its objects include" an amendment of very doubtful value.

In amending the Act, it would be desirable to insert the word "primary" before "object". This has been done in the Madras Act. In a society for the sale of milk, the creation of such funds may be a secondary and even distant object, but it may be advisable to keep liability limited. Bombay has done this.

Bombay further adds: and the members of such a society shall, on its liquidation, be jointly and severally

liable for and in respect of all obligations of such a society: Provided further that when the question whether the liability of a society is limited or unlimited has once been decided by the Registrar at the time of registration his decision shall be final. Madras repeats the first three lines only, omitting the proviso.

In the old Act, section 7, the liability of rural societies was unlimited and of urban limited or unlimited.

Object—The objects must be clearly and fully specified as they have to be approved before registration, they correspond to the memorandum of association of a company and they restrict the transactions of a society as it cannot have any other object than those specified. Any act which is beyond the objects thus specified is ultra vires and void and a contract entered into beyond them is void as the members have only agreed to associate together and to undertake liability for the promotion of specified objects: the members of the Committee are personally liable for any loss the society may sustain by reason of acts done by them not warranted by the objects. As the object must be the promotion of the economic interests of its members, a society must not serve non-members and transaction with non-members may be held ultra vires. Thus a society established for co-operative sale of produce cannot make loans unless this is specially mentioned as an additional object.

Some Acts specify the objects for which a Co-operative Society may be formed, that of South Africa is an example; others define the objects in comparatively narrow terms.

Economic interests are not defined but the preamble

suggests thrift and self-help.[1] In France, the object of Agricultural Credit Societies "shall exclusively be that of facilitating or of guaranteeing operations affecting agriculture".

The supply of capital for productive purposes, education in the true uses of credit, combination to secure the fullest advantages in a world of competition, the elimination of middlemen's profits are amongst the objects aimed at. The essential idea is the carrying on of business in common which may be:—

(i) for credit:
(ii) for purchase of raw materials:
(iii) for sale of products (agricultural or industrial):
(iv) for production:
(v) for purchase wholesale for sale to members of foodstuffs and household requisites (e. g., stores):
(vi) for acquisition of implements for agriculture or industry:
(vii) for construction and acquisition of dwelling houses (e. g., building societies).

An Indian Station Club is a Co-operative Society, whose object is the provision of recreation, games, reading, etc., for its members but not the promotion of economic interests. It is usually strictly co-operative in its constitution and rules. It is a good example of a

---

1. The Bihar Act mentions "promotion of common interests of its members in accordance with co-operative principles". The Bengal Act has a similar provision.

"Several co-operators have stressed on the promotion of the economic interests of its members as the main object of a co-operative society. But co-operation for better living is not less important than co-operation for furthering economic interests. Better living is the final objective of co-operative effort and better methods of production and better business are but the means to the end". (Rajagopalan). In fact there are co-operatives for mutual welfare and for various types of communal services, e.g., health societies, anti-malarial societies, better living societies etc in India.

Co-operative Society which cannot be registered under this Act but may be dealt with under the Companies Act.

Of its members—A society is only concerned with the interests of its members and its activities cannot be affected by the interests of non-members. Dealing with non-members can only be undertaken when this furthers the interests of members. The Local Government (Sec. 31) may prohibit or restrict such transactions, it cannot order them to be carried out.

These words "of its members" find a prominent place in every Act relating to co-operative societies.[1]

Co-operative principles have already been discussed: any attempt at a precise definition of a Co-operative Society was intentionally avoided in the interests of elasticity and simplicity. The Act contains just the minimum conditions necessary to prevent abuse.

With the object of facilitating the operations—Central Banks and Unions can only be established with the object of facilitating the operations of primary societies. Profit-making can be no part of their object. "The acquisition of gain" must be left to joint-stock companies. They were not recognised by the first Act and this section has been amended to include them.

---

1. "In the Punjab—it may also be the case elsewhere—there has also been a tendency to register societies whose members have joined together solely to take advantage of Government's financial and other concessions to co-operative societies; perhaps, too, to borrow from central banks at a comparatively low rate of interest. A typical example is the Co-operative Transport Society formed by its promoters for their exclusive benefit with no regard to those who use the transport. I even heard of a Cinema Society formed on similar lines. Such societies have not as their object "the promotion of the economic interests of their members" in accordance with co-operative principles "and should therefore be registered under the Companies' and not under the Co-operative Societies Act. This applies to all societies whose dealings' would be mainly with non-members". Darling, p 20

(i) They must be established with the object of facilitating the operations of Co-operative Societies,

(ii) their liability must ordinarily be limited,

(iii) they are not subject to the restrictions imposed by section 5, so far as their members are societies,

(iv) they are not subject to the requirements of section 6 with regard to members' residence, and similarity of tribe, class or occupation:

where shares are held by individual persons, the latter are restricted by section 5 but not by section 6. Thus one society and one individual could form a Central Bank.

A Central Bank, in short, need not conform to general co-operative principles. It may be and usually is a joint-stock company, enjoying the privileges of registration under this Act on condition that it adheres, strictly to its object. In the Companies Act, section 254[1] a joint-stock company is defined as a "Company having a permanent paid-up or nominal share capital of fixed amount divided into shares, also of fixed amount......and formed on the principle of having for its members the holders of those shares...... and no other persons."

It thus becomes exceedingly important to check any tendency to put profit-seeking for itself before the object of helping other societies. The following extract from a Provincial Report is an instance of the evil to be fought: The arrangement whereby it was agreed that village societies should deposit their surplus funds in the......Central Bank has been discontinued as unprofitable to the Central Bank which had to pay 7 per

---

1. This section corresponds to Sec. 566 of the Indian Companies Act of 1956.

cent. whereas it could get what it wanted on its own account at 6 per cent.

As already mentioned in discussing the question of thrift, a Central Bank must give preference to deposits from primary societies representing the savings of their members.

As the Central Banks hold in deposit the surplus funds of primary societies, it is essential that these latter should elect wholly or in part the Managing Committee of the Central Bank, as a safeguard against these funds being used in any speculative venture or in any manner calculated to injure their interests.

"May be registered."—It must be registered under this or under the Companies Act. Cf. section 11 Indian Companies Act of 1956 : "no Company, associatton or partnership consisting of more than ten persons shall be formed for the purpose of carrying on the business of banking unless it is registered as a Company under this Act" (or other Act) and no similar Company of more than 20 persons shall be formed for the purpose of carrying on any other business that has for its object the acquisition of gain by the Company........or by the individual members thereof unless it is registered under this Act (or other Act). These provisions apply to such associations until and unless they are registered under this Act (sec. 48).

This section of the Companies Act deserves to be more widely known. In Europe, the general legal view is that all associations are illegal, unless permitted by the law.

An unregistered society would not be a body corporate; it would be illegal: it could not sue or be sued; it

could not be voluntarily wound up[1]; it could not enter into contracts; it could have no legal rights over property and every individual member would be liable to be sued by any or all of the creditors for the debts of the Society. It would not enjoy any of the privileges—exemption from Income-Tax, Stamp duty, Registration fees, etc.. Unregistered Co-operative Societies are common in Germany and are found elsewhere[2]: the members assume considerable risk in order to avoid restrictions as to accounts, audit, etc. Such societies cannot enforce their by-laws.

There is nothing in this Act to prevent a Co-operative Society from being registered under the Companies Act, and where the promoters do not wish to follow co-operative principles in their entirety or object to official control it is preferable that they should register under the latter Act rather than seek exemption by the Local Government under sections 45 and 46. When such a society applies to be registered under this Act, it is an act of purely voluntary selection and the Registrar has the right to point out that they have an alternative course, if they do not fall in with his requirements. Madras insists, that, before registering a society, the Registrar shall satisfy himself that it has reasonable chances of success with reference to local conditions. If he refuses to register, he must record a brief statement of his reasons for such refusal and the

---

1. The Court could order it to be wound up under Part X of the Indian Companies Act of 1956.

2. "Owing largely to the imperfections of the Italian law, only a limited number of Co-operative and Friendly Societies and Village Banks have registered themselves. Application for registration has to be made to the local Court of Justice, and the vagueness of the law has allowed prejudiced judges to insist on the insertion of unreasonable conditions or to refuse registration on arbitrary grounds.

applicants receive a copy free of cost. All orders of the Registrar are open to revision by Government, and an appeal lies against a refusal to register.

Limited—may mean limited to the amount, if any, unpaid on the shares respectively held by the members, or limited to such amount as the members may respectively undertake to contribute to the assets of the society in the event of its being wound up (limited by guarantee). The liability, of course, is for the debts of the society in the event of its liquidation (cf. Burma Act, section 2 (c)). The Madras Act says the members shall, on its liquidation, be jointly and severally liable for and in respect of all its obligations.

The sum for which individual members are liable must not be less than the share value ; and the amount of liability attaching to each share must be fixed by the by-laws. A reduction of the amount of liability attaching to each share should only be effected after publishing a notice in the papers and informing creditors, because it is for the creditors' money that the liability exists. A company cannot reduce the liability on each share without reconstitution. It can, however, reduce the number of shares (and so the total liability). To any such reduction the sanction of the Court is necessary.

Liability of members—In the German Act "all persons becoming members incur liability also for the engagements contracted previous to their entry" this is the ordinary company rule and it apparently applies in India. See sections 23 and 24 "debts as they existed at the time of his ceasing to be a member (or decease)." These obviously include all debts. In the Irish rule, however, each member is declared liable only for the debts incurred and loans advanced during his membership. Such a rule may place a crushing penalty on the oldest members. In some Russian credit

societies, liability is limited to twice the amount of credit opened to members.[1]

In Swedish societies a member's borrow!ng rests on the area (not more than his actual land) for which he elects to enter the society ; and his liability is similarly based. A man may own twenty acres, but "enter" for only ten.

Proviso (1)—The proposal that the Registrar should have a discretion in the matter was wisely dropped.

Non-agricultural societies with limited liability require special care as they show a tendency to forget true co-operative principles. The fifth conference (1911) expressed the opinion that such societies should be encouraged but that they should be confined to as small a scope as possible and that in all cases the recording of the purposes of the loan must be insisted upon. Further the Committee ot the society must see that the loan is applied to the purpose for which it is given. Without this safeguard such socieites were quite likely to lead to increased indebtedness.

The Committee on Co-operation thought that as a general principle, liability in non-agricultural credit societies should be limited only :

(1) When the clientele is fairly well-to-do ;

(2) When owing to local conditions full mutual knowledge cannot so easily be secured among the members ; and

(3) When the share capital is adequate to the business undertaken

It is very important in such societies to limit dividends, to insist on punctual repayment and to fix

1. The Liability of a member of a co-operative society in Japan is 'limited by guarantee. This really means an addition to the liability based on shares. On the other hand in Belgium the members of a society are responsible only to the extent of their capital subscription to the society. This rule has restricted severely the borrowing capacity of the society.

maximum loans for each member; ordinary banking principles should be strictly adhered to.

Unlimited liability is of course the earlier and ordinary form of liability that prevails throughout all business by individuals and unregistered partnerships. It is universal except where specially replaced by limited liability under some law.[1] Limited liability was allowed to Co-operative Societies in England in 1862, almost as soon as it was permitted to the ordinary commercial company.[2]

Where a society is not a body corporate, as in an unregistered society, unlimited liability means that any or all the creditors may sue any single member for their debts. In a registered society, liability refers to the contributions which a liquidator may levy under section 42 (2) b. It is liability to contribute which can only be enforced upon the winding-up. An exception in favour of the Crown is embodied in section 44 whereby liability may be enforced without the society being wound up. In Germany, societies do not appear to be bodies corporate and any creditor may sue any member and leave him to recover from his society. Under the English Friendly Societies Act also societies are not bodies corporate.

---

1. Sec. 5 of the Madras Act provides for the change of liability of a society from limited to unlimited or vice versa with the previous sanction of the Registrar. The Society is required to give notice of its intention to change its liability to all members and creditors and they shall have the option to withdraw their shares, deposits or loans within three months of the service of such notice. Sec. 16A of the Bombay Act has a similar provision but insists that the Registrar must be satisfied that with respect to each member or creditor either his assent has been obtained or he has been allowed his share or his claim has been discharged. Sec 43(2) of the Bengal Act provides that the option shall be exercised within six months of the date of notice.

2. Fay. Co-operation at Home and Abroad, pp. 353-354 (2nd Edn) In Germany the law of 1867 prescribed unlimited liability for all societies; in 1779 limited liability was permited.

Unlimited liability is made legally obligatory in rural credit societies, as it is the cheapest means of securing the interests of depositors and so of providing funds for members. It is a practical necessity in a poor community, but it is found to possess so many advantages that, even apart from this, its retention is desirable.[1]

It must be real and members must not be allowed to slip out of it (cf. secs. 14, 23, 24, 42 (2) b).

It must not be limited by any act of a single member. For instance, members should not be allowed to pledge their unlimited liability in more societies than one. The model rules of a Raiffeisen Society prescribe that persons who already belong to another credit association with unlimited liability may only acquire membership if they declare forthwith their withdrawal from such other society. This condition is usually present in all model by-laws issued in India.

Also members should not be permitted to encumber their property by mortgage, etc., : if this be done, proceedings should at once be taken to recover any outstanding loan, and to expel the member. The Committee on Co-operation (para 4) did not think that unlimited liability carried with it any obligation against alienation. But if a member, having pledged his unlimited liability to his society, proceeds to encumber or dispose of his material possessions what becomes of the security he offered to depositors?

The above does not refer to borrowing from a co-operative mortgage bank, but his borrowings from such a bank should be reported to his primary credit society.

1. Since 1948 co-operative societies in rural areas have expanded the range of their activities and in many States primary credit societies with unlimited liability have been converted into multipurpose societies with limited liability. The Rural Credit Survey Committee have recommended that large-sized credit societies should be organised on the basis of limited liability.

The Local Government is given power to relax the rule of unlimited liability to meet special cases: if for instance a local magnate, whose sympathy and assistance it is important to secure, desires to become a member but does not care to assume a liability which is wholly without limit, in such a case his liability may be limited to the amount of a guarantee. Such was the original intention of the Government of India but the first conference (1906) held that large land-owners can best assist the movement by financing societies and, while standing apart from participation in their management, by helping the managing body by advice as may be necessary and showing an interest in the societies' progress. It would be not co-operation but charity, if a rich man joined the society solely to help his poorer fellows. Members, in joining, must be actuated by a desire to help themselves. The early confusion of ideas here and elsewhere is interesting.

Unlimited liability having been adopted to increase the security offered to outside depositors, the members must adopt certain measures to protect themselves against the risk involved. The first measure is to restrict membership to a small area so as to ensure close personal knowledge of one another's business, position and character (Sec. 6 (a)).

The second is to secure close supervision over the employment of borrowed money. The third is publicity within the society as a member must know what he is liable for. The fourth is the steady creation of a reserve fund (cf. sec. 33 and rules under sec. 43 (p)) to serve as a buffer between the creditors and the members. The smaller the reserve fund, the greater is the real liability, but as the reserve fund grows, the liability declines.

The fifth is restriction on transfer (sec. 14) and on withdrawal (sec. 23).

The sixth is the fixing of a limit on their own liability (sec. 30). The members should every year agree upon a maximum sum, up to which their society may borrow and along with this they should fix maximum credit for each member. If the Committee exceed these limits they are legally personally responsible for any loss the society may sustain.

By observing these precautions and by carefully confining loans to members selected for their honesty, the dangers involved in unlimited liability are reduced to a minimum.

In unlimited liability societies, the share does not represent the member's portion of the capital nor does it determine his liability. A member may take more than one share to increase the stability and utility of the society and to encourage thrift. In pure co-operation no dividend is paid on shares in excess of the ordinary interest rate. Presumably, in determining contributions under section 42 (2) (b), the liquidator would not be guided by the number of shares held by individual members.

Unlimited liability renders desirable the exclusion of women and minors. In the former case the value of their liability is extremely doubtful, in the latter case it does not legally exist.

Note the wording of proviso (2), no society should be allowed to acquire a share in a society with unlimited liability for obvious reasons of prudence. The Madras Act, by section 5, makes provision for a change in liability. The previous sanction of the Registrar is required and every member and creditor has to be notified in writing and given opportunity to withdraw shares, deposits or loans as the case may be.

The Indian Central Banking Enquiry Committee understood that the present Act does not provide for the registration of societies of All-India character, like the

Indian Provincial Co-operative Banks Association, operating over more than one province. They recommended that the Act should be amended to provide for such registration.[1]

It is not easy to understand this recommendation. There is nothing in the Act to prohibit such registration and the wording follows closely that of the Indian Companies Act under which associations operating all over India are freely registered.

Restrictions on interest of member of society with limited liability and a share capital.

5. Where the liability of the members of of a society is limited by shares, no member other than a registered society shall—

(a) hold more than such portion of the share-capital of the society, subject to a maximum of one-fifth, as may be prescribed by the rules, or

(b) have or claim any interest in the shares of the society exceeding one thousand rupees.

The Burma Act prohibits registration of a society as limited by shares unless its by-laws prescribe these conditions.

The Bombay Act has :— "(b) have or claim any interest in the shares of the society exceeding ten thousand rupees : provided that if the society is a housing society a member may have or claim an interest in the shares of the society not exceeding Rs. 20,000". Madras adheres to the old wording above [2]

1. The Multi-unit co-operative societies Act 1942 was amended in 1956. This Act provides for the incorporation, regulation and winding up of co-operative societies with objects not confined to one State.

2. Madras adheres to the old wording above but under sec. 60 the Government have waived these limits in the case of a few societies e.g., Housing societies, selected Central Banks, Madras State Handloom Weavers' Co-operative Society, etc.

Capital—here means the funds contributed or guaranteed by shareholders or members[1]. *Share-capital* is commonly classed under three heads; *authorised capital*: being the amount of share-capital which a society (or Company) is authorised by its by-laws (or articles) to raise : *subscribed capital* : being the total value of the shares taken up by members, that is the sum which the existing shareholders have undertaken to pay up or the sum of their total liability : and *paid-up capital* : being the amount of share capital actually paid up out of the sum (subscribed capital) which they have undertaken to pay. The difference between the subscribed capital and the paid-up capital represents the reserve liability of the members. In a society of limited liability, this represents the maximum sum which a liquidator can call up by way of contributions (cf. section 42 (2) b).

In limited liability societies, under German law, an additional share cannot be acquired till the last one taken has been fully paid up. Italy goes further and does not allow any unpaid liability at all.[2]

Under the Companies Act no subscriber of the memorandum is permitted to take less than one share and this should be applied to Co-operative Societies and the joint holding of a share should be forbidden.

The first condition is usually extended to unlimited liability societies by by-laws; but in these societies it is the accepted rule in pure co-operation that no member should have more than one share—a rule not followed in India. It is a dangerous situation as more shares may mean more profits without more liability. This section

1. Findlay Shirras: Indian Finance and Banking, p. 406.

2. In England and Italy the lay fixes an arbitrary maximum of shares which may be held by a member. In England the maximum is £. 200 and in Italy 5000 lire. "It is significant that in Germany where the co-operative law was framed with a special view to facilitating co-operative banking in towns, such a maximum is absent" (Fay Vol I p. 362).

does not apply to unions whether for banking, guarantee, or other objects. The principle is characteristic of Co-operative Societies and is designed to exclude the mere seeker after profits. He is further debarred by section 33 and rules under section 43 (r). Clause (b) restricts acquisition of rights by mortgage. Cf. section 14 which makes the transfer or charge of shares or interest subject to this maximum.

This restriction may be removed by general or special order of a Local Government passed under section 46 (q.v) and the Committee on Co-operation considered that the statutory limit may be raised to some higher figure such as Rs. 5,000 or Rs. 7,500 where difficulty is experienced in raising sufficient share-capital for Central Banks but added that in such cases precautions should be taken to ensure that each shareholder should not be allowed more than one vote (cf. sec. 13)[1].

In the Industrial and Provident Societies Act and in most Acts of other countries relating to Co-operative societies, a similar restriction on the amount of interest a member may hold is to be found.

In Italy, if a member by inheritance acquire more than the maxiumm limit of shares, he is not entitled to any share of profits on the excess number and must sell them. If he does not sell them then the society, may sell the shares and hold the proceeds at the members' disposal. This condition is now finding a place in the model by-laws of Indian provinces.

---

1. In some Central Banks in the Punjab, this restriction was relaxed, but this led to obvious disavantages. For the Bhola Motor Owners Co-operative Society Ltd., Bakargunj, Bengal, the limit has been fixed at Rs. 5,000.

In the case of a few Co-operative Sugar factories, "to attract the substantial investor, the maximum shareholding permissible under the statutory rules has been raised from Rs. 1,000 to Rs. 25,000 and the maximum dividend from 10 to 15 per cent. Both changes savour more of capitalistic than co-operative enterprise." (Darling p. 19).

Interest—here (and in secs 14, 20, 21 and 22) means not, of course, interest on capital but the whole stake of the member in the funds of the society.

6. (1) No society, other than a society of which a member is a registered society, shall be registered under this Act which does not consider of a least ten persons above the age of eighteen years and, where the object of the society is the creation of funds to be lent to its members, unless such persons— Conditions of registration.

(a) reside in the same town or village or in the same group of villages, or

(b) save where the Registrar otherwise directs, are members, of the same tribe, class caste or occupation.

(2) The word "limited" shall be the last word in the name of every society with limited liability registered under this Act.

Burma adds after "limited" or "the vernacular equivalent", and adds "wherever the name appear." Also cf. section 12 of the Burma Act.

Persons—Section 3 (39) General Clauses Act (X of 1897) prescribes that "person" shall include any company or association or body of individuals, whether incorporated or not. In England it would seem that a corporation or a partnership could not be a member, and Bengal now by rule specially excludes a joint-stock company.

Cf. Indian Companies Act, any seven or more persons associated for any lawful purpose, may form a company. In England, Germany and South Africa, the minimum for a Co-operative Society is also seven.

In New York State, Finland etc., it is five.[1] Out of thirty-three state laws in America, four insist on 3 persons, eighteen require 5, four require 7, one 10, one 20, two 25 and three make no provision.

Clause(1) does not apply to unions or most Central Banks.

The House of Lords Committee recommended that the number of (primary) Banks combining to form a Central Bank should not be less than seven and this is the number which is prescribed by the Japanese law of 1921 for a federation or union of societies.

(a) Cf. section 4 (2) such a society, unless the majority of members are not agriculturists, must have unlimited liability and therefore a limited area (see p. 83). A non-credit society (e. g., stores) is not subject to unlimited liability or limited area.

Above the age of eighteen years—This condition is prescribed at the time of registration but the provision made in section 4 (b) of the old Act for the maintenance of this qualification among members afterwards was not retained in the new Act. The sixth conference considered that minors should not necessarily be debarred from becoming members when they were heirs of deceased from becoming members when they were heirs of deceased members. The Madras Act has "who have attained the age of majority."

1. In Finland, for practical reasons it has been found necessary to prescribe for rural banks that they must have at least fifteen members at the start, and if a Co-operative store is started, the majority of whose members are persons of small means, it is in most cases necessary to fix the minimum number of members at 200 to start with. (Co-operation in Finland, p. 71).

In Quebec, 25 members are required in agricultural associations with limited liability. In Saskatchewan, 5 farmers are required for agricultural non-credit societies. The proportion of agriculturists must be 75 per cent. and no transfer of shares is allowed which would reduce the total number of agriculturists below that percentage.

Cf. notes to sections 14, 22, 43 (n and d). In limited liability societies, the admission of minors must depend on whether the shares are fully paid up or not. In the latter case the minor cannot be called to pay the reserve liability.

In unlimited liability societies, there is no object in admitting minors as (1) they cannot incur liability, and (2) they cannot obtain loans except perhaps for necessaries. The decision rests with the society and they would be well advised to exclude minors. Subject to the provisions of section 22, the questions of the relations of a society to the minor heirs of deceased members, is left to the operation of the ordinary law.[1]

Reside—The proposal to add "or holds property in" has been frequently discussed and has met with much support but was negatived. Bombay and Madras have not adopted this in framing their Acts. Residence is essential in order to secure full mutual knowledge. The fourth conference (1909) favoured a proviso "provided that an agriculturist who resides in another village but whose principal holding is in the village where the Co-operative Credit Society is situated, should not be debarred from joining the society," but this was not adopted.

The field of the society should be sufficienty restricted to allow members to be mutually acquainted and to be in a position to exercise an effective mutual control. The essential principle is that societies should ordinarily consist of members so closely in touch with one another that they are willing to be, and can be,

1. A member of a Joint Hindu family cannot be debarred from joining a co-operative society. (Kishanlal Kapurchand v. Central Co-operative Bank Seoni I. L. R. 1945 Nag. 677). In Bindeshwari Prasad v. Shivadutt Singh (A. I. R. 1938 Pat. 315) it was held that the liability incurred by a member of a joint family who joined the society as a representative of the adult members was binding on the entire joint family property.

both in name and in fact, jointly responsible (Committee's Report).[1]

It is one of the principles of co-operation that societies should be open to all fully qualified [cf. notes to sec. 43 (q)] ; in order to prevent them from becoming unwieldy the area should be limited. This clause indicates that the type considered most suitable is that of Raiffeisen and not of Schulze.[2]

Clause 1 (b)—"Same class," e.g. soldiers of one regiment.

Mr. Wolff apparently objects to this : he considers that a mixture of classes and wants makes for strength, but experience teaches that homogeneity of membership makes for success.[3]

Clause 2—Follows the Companies Act. See notes to section 4.

This includes societies limited by guarantee and unions. A society would not be registered by the name of a Company.

---

1. The main characteristic of this basic unit or local rural co-operative credit society is that the area from which the members are recruited is so restricted that all members or at least the officers may know personally every person admitted to membership. Indeed, this is the first essential, for not otherwise can be obtained that full and regular attendance at meetings and that personal acquaintanceship making for friendly relations and mutual confidence which create and maintain the true spirit of co-operation. (Herrick, p. 461).

"The small society has qualities which offset its weaknesses; its staff is small, its service simple and partly carried on by the members themselves. Its installations are modest, even rudimentary, but its modesty is part of the friendly atmosphere that the members appreciate. The bond of friendship is a strong one; the society is a kind of family" (G. Fauquet).

2. "As a rule membership per society is small so that the vast majority of societies are uneconomic units. The average membership was 44 ; separate figures for some State are 18 for Madhya Pradesh, 24 for West Bengal, 25 for Bihar, 26 for Assam, 33 for U.P., 79 for Bombay and 88 for Madras."—(Rural Credit Survey. Vol. II p. 216).

3. Bombay Act (VIII of 1948) has omitted "caste".

There are thus three conditions for a credit society; failure to retain ten members may lead to cancellation of registration (sec. 40) but breach of conditions (a) and (b) above does not involve cancellation unless this is provided for in the by-laws (see notes to sec. 40). Apparently by-laws defining the area or the tribe should be declared compulsory under section 43 (c).

Power of Registrar to decide certain questions.

7. When any question arises whether for the purposes of this Act a person is an agriculturist or a non-agriculturist, or whether any person is a resident in a town or village or group of villages, or whether two or more villages shall be considered to form a group, or whether any person belongs to any particular tribe, class, caste, or occupation, the question shall be decided by the Registrar, whose decision shall be final.

Instead of "for the purposes of this Act", Bombay has "for the purpose of the formation, or registration or continuance of a society under this Act."

Burma has (section 13) "The Registrar shall decide all questions as to whether any application conforms to the requirements of section 12 and whether the objects of the society are in accordance with section 3".

It is interesting to note that the term "agriculturist" is not defined and that the Local Government was not given power to define it by any rule under section 43. In the Punjab the Land Alienation Act of 1900 defined the expression but the Registrar would not be bound by that.

Agriculturist—One occupied in cultivating the ground (Century Dictionary).

9

Application for registration.

8. (1) For purposes of registration an application to register shall be made to the Registrar.

(2) The application shall be signed:—

(a) in the case of a society of which no member is a registered society, by at least ten persons qualified in accordance with the requirements of section 6, sub-section (1); and

(b) in the case of a society of which a member is a registered society, by a duly authorised person on behalf of every such registered society, and where all the members of the society are not registered societies, by ten other members or, when there are less than ten other members, by all of them.

(3) The application shall be accompanied by a copy of the proposed by-laws of the society, and the persons by whom or on whose behalf such application is made shall furnish such information in regard to the society as the Registrar may require.[1]

Burma adds after "society" in line two of clause (3) "which shall state the objects of the society".

1. Bengal Rule 7 lays down that no primary society shall be registered unless it consists of at least 15 persons above the age of 18 years and no provincial or central society shall be registered unless it has among its applicants at least (a) five co-operative societies or (b) five applicants composed of individual persons and co-operative societies.

See notes under section 43 (b).

Cf. Indian Companies Act 1956, section 15. The memorandum shall be signed by each subscriber in the presence of at least one witness who shall attest the signature.

"Sign" with its grammatical variations and cognate expressions shall, with reference to a person who is unable to write his name, include "mark" with its grammatical variations and cognate expressions (General Clauses Act, Sec. 3, cl. 52).

The words "duly authorised" in clause (2) (b) suggest that a copy of the resolution of the society authorising the person to sign should be produced.

The application must be in writing and the by-laws (which correspond to the Articles of Association) must be recorded.

In order to overcome suspicion at the beginning, it is essential to start with a well-considered set of by-laws preferably with one that has already worked successfully. Alteration of the by-laws at the outset is sure to retard the growth of confidence, especially in societies of unlimited liability (cf. Ransom). In the New York State law relating to co-operative agricultural, dairy and horticultural associations, the by-laws need not be submitted before registration, but there must be a general meeting within thirty days after incorporation to adopt by-laws regulating the conduct and management of the association.

In the Act itself no by-law is prescribed, but both in England and Germany the by-laws submitted with the application must deal with certain points (see notes to sec. 43 (c)). In India it is obvious that the by-laws must prescribe the area and tribe, etc. (Sec. 6 (1) and b) and the address (sec. 15).

In England and Germany the names of the Committee must be submitted with the application.

The Registrar of Companies has no such discretion, but presumably he would not register a Company whose articles were contrary to the Act. Cf. Indian Companies Act of 1956, section 35 (1). In South Africa, the Registrar submits the application to the Minister of Agriculture who may veto the registration of any society; but if within a period of one month he shall not exercise his right of veto, the Registrar shall register.[1] A society does not acquire privileges until it is registered (i.e. re: stamp duty, registration, income-tax, etc.).

From this point onwards the phrase "registered society" is used and the Act only applies to these. The first effects of registration is to remove the societies from the operations of the Indian Companies Act.

See note to section 43 (2).(c). Although not mentioned the usual restriction may be presumed that the name must not be identical with that of an existing society.

There is no appeal provided for from an order refusing to register. But this may be provided for by rule; the Bombay and Madras Acts allow an appeal to government within two months of the date of the communication of the order.[2]

In the English Act it is provided that the Registrar shall issue an acknowledgment of registry. This is necessary (see sec. 10) and should be prescribed by rule under section 43(b).

Evidence of Registration.

10. A certificate of registration signed by the Registrar shall be conclusive evidence that the society therein mentioned is duly

---

1. The application goes to the minister because he grants extensive financial assistance.

2. The Bihar Act provides that if the Registrar refuses to register a society he shall record his reasons for such refusal and that an appeal may lie to the Government within two months from the date of receipt of the order.

registered unless it is proved that the registration of the society has been cancelled.

Cf. Indian Companies Act of 1956, section 35 where, however, the certificate is "given" by the Registrar. "Duly registered" apparently means that section 9 has been complied with in its entirety so that the certificate is conclusive evidence that the provisions of the Act have been duly complied with. Thus the two Acts agree.

For effects of registration, see section 18.

Such a certificate would suffice against a claim to income-tax. A certificate bearing the seal or stamp of the central office shall be received in evidence without further proof of the signature (Friendly Societies Act).

The certificate is a conclusive answer to any objection relating to registration and at once enables a society to enter into contracts. It is prima facie evidence that all the provisions of the Act have been duly complied with: it is conclusive evidence of a society's corporate existence.

This section follows the Friendly Societies and Industrial and Provident Societies Acts.

The certificate would also serve to exclude evidence that a society was not really co-operative or was not what it claimed to be. It would thus serve to deprive Civil Courts of jurisdiction in certain cases and confine malcontents to resort to the Registrar under sections 35 and 36.

Amendment of the by-laws of a registered society,

11. (1) No amendment of the by-laws of a registered society shall be valid until the same has been registered under this Act, for which purpose a copy of the amendment shall be forwarded to the Registrar.

Burma inserts after "amendment" in the first line:—whether by way of cancellation, addition or alteration.

Bombay inserts after "valid":—until approved by the resolution of a general meeting and registered.........

(2) If the Registrar is satisfied that any amendment of the by-laws is not contrary to this Act or to the rules, he may, if he thinks fit, register the amendment,

Bombay omits "if he thinks fit."

Burma makes it obligatory (shall) to register "provided that the Registrar may for reasons given to the society refuse to register the amendment."

(3) When the Registrar registers an amendment of the by-laws of a registered society, he shall issue to the society a copy of the amendment certified by him, which shall be conclusive evidence that the same is duly registered

In the case of Companies an alteration of the memorandum of association requires confirmation by the court, here it requires approval of the Registrar. The memorandum of a Co-operative Society must conform to sec. 4. Alteration of the by-laws of a Company can be carried out by special resolution. Local Governments usually have made rules requiring a majority at a general meeting at which a certain proportion (two-thirds) of the members must be present. Manitoba insists upon this two-thirds majority as well as upon the approval of the Registrar. A Co-operative Society could not alter its by-laws so as to conflict with the provisions of the Act or with co-operative principles. The whole section is taken from the Friendly Societies Act. Clause 2 merely reproduces section 9.

Amendment ordinarily means the act of making better, correction, improvement, but in this sense it means any alteration or change either by way of correction or addition (Century Dictionary). The English Act says: it includes a new rule and a resolution rescinding a rule. It may even amount to a complete substitution of an entire set of rules for the existing set and bearing at the beginning the words "all previous rules rescinded." In New York State law on co-operative productive societies "the power to amend shall include the power to increase or diminish the amount of capital stock and the number of shares, but such amount shall not be diminished below the amount of paid-up capital at the time the amendment is adopted." Great care is required in seeing that this section is properly complied with. No by-laws can be acted upon unless they have been registered and any action in accordance with unregistered amendments might be held to be illegal. In an English ruling the presiding judge stated that "these societies cannot depart from their established rules or neglect to comply with the Act in the mode of altering or repealing them, without exposing their property to danger and themselves to great expense, loss and inconvenience."

The original rules hold good until amendments have been registered. The provision as to appeals from a refusal to register a society would presumably apply to a refusal to register an amendment of a by-law.

Bombay allows an appeal to Government from any order or decision of or sanction by the Registrar. This appears to allow an appeal from an order registering an amendment. The Madras Act has : In case of refusal, an appeal shall lie to the Local Government within two

months from the date of the issue of the order of refusal by registered post.[1]

The Act prescribes no period within which an amendment shall be tendered for registration. In South Africa, the Act fixes a limit of one month. The Minister of Agriculture can refuse to allow the alteration.

Rights and liabilities of members.

Member not to exercise rights till due payment made.

12. No member of a registered society shall exercise the rights of a member unless or until he has made such payment to the society in respect of membership or acquired such interest in the society, as may be prescribed by the rules or by-laws.

Burma has—"No person shall exercise.. "

Cf. Model articles, Indian Companies Act "No member shall be entitled to vote at any general meeting unless all calls or other sums presently payable by him in respect of shares in the Company have been paid."

---

1. Under Bombay Rule 6 a society is under obligation to forward to the Registrar amendments of by-laws within three months from the date of the meeting at which these were adopted. The Bihar Act (sec. 26) empowers the Registrar to direct amendment of the by-laws of a registered society. Under this section the Registrar may direct the society to amend the by-laws within a specified time. If the society fails to comply he may, after giving the society a hearing, register the amendment and notify the society which, if dissatisfied with the order, may appeal to the Government within two months from the date of the issue of the order. In Bengal the Act authorises the financing bank to direct a society which is a member and debtor of the bank to make specific amendments of its by-laws. If it does not comply, the bank may forward the proposed amendment to the Registrar who, if satisfied that the amendment is not contrary to the provisions of the Act or the rules, may register the amendment (sec. 18).

The Madras Act allows the persons who have signed the application for registration to elect a Committee to conduct the affairs of the society for a period of three months from the date of registration or for such further period as the Registrar may consider desirable. This Committee is to cease to function as soon as the members of the society have elected a Committee in accordance with its by-laws.

Rights and liabilities of members are dealt with in various sections of the Act, in rules under the Act, and in the by-laws.

A member must be elected by the Committee (Sec. 43 (d) before he can be admitted (cf. definition): thereupon after payment of any prescribed fees, share instalment, etc., he becomes entitled to exercise the rights of a member, including all the benefits of the society. He may attend general meetings[1] (sec. 43 (f) rules) and vote thereat (sec. 13) including voting for the Committee (sec. 43 (g)), he may, in collaboration with the number of members prescribed in the by-laws insist on the Committee calling a general meeting; he is entitled to obtain a loan for specified purposes approved by the Committee if his security is good and subject to his maximum credit; he is entitled to deposit his savings in the society (sec. 43 (e)) if the society can employ the money usefully: his share or interest is exempt from attachment (sec. 21): he may transfer this share or interest subject to certain conditions (se 14) though he still remains liable for two years (sec. 23): he can nominate a person to whom payment shall be made on his death (sec. 43 (n). He is entitled to a

1. The power of the members is supreme but it may be exercised only at meetings regularly assembled, at which a majority prevails (Herrick, p. 147) Hence the great importance of the right of members to insist on a general meeting being summoned.

share of the profits when these are distributed (sec. 43 (r) and is exempt from income-tax thereon (sec. 28). He is entitled to a copy of the rules or by-laws (on payment) and also to copy of the annual return and balance sheet (free). He may inspect the books at all reasonable hours at the society's office, except the deposit and loan (?) account of any other member.[1] He has a right with others to call on the Registrar to hold an inquiry (sec. 35) and (sec. 39) to apply for dissolution. He can appeal against the order for dissolution (sec. 39 (2)) : on his death the disposal of his share (sec. 21) is regulated and his liability (sec. 24) is limited to one year. He may institute proceedings against officers of the society for offences committed. Finally he has the right to withdraw if he disagrees with the decision of the majority. In unlimited liability societies this is a very important right indeed as it enables a member to withdraw before a liability is incurred to which he objects (cf. sec 23). He is not entitled to a share of the reserve fund (sec. 33), not to sell his share to any one not approved by the Committee.

Those rights are protected by the rule of one man one vote and by the prohibition of proxy voting, so that a member who attends a general meeting can be certain of a hearing from those who are going to vote on the point under discussion.

---

1. According to the writers of the book on the English Acts published for the Co-operative Union, Manchester, this privilege of unlimited inspection had become much abused, and was often used not so much for the general good of a society as from self-interested motives, and for the satisfaction of a member's personal vanity. This power of individual inspection is now limited to a member's own account, and the book containing the names of the members. Wherever there is real cause for enquiry, it only needs ten members to apply to the Registrar for one. The Registrar will then appoint a competent person to make a thorough enquiry and report.

In British Columbia (Co-operative Associations Act, 1920) in associations for dealing with agricultural products, no member shall be entitled to vote at any general meeting or be appointed a director of the Association unless he has sold his main crop or produce of the year through the Association, or undertakes in writing to do so during the ensuing year or has received consent of the directors to dispose of this crop or produce otherwise.

This section says nothing about liabilities, and a member cannot escape from these by withholding any payment prescribed. One who merely signs the application (Secs 2 (c) and 8) incurs all liabilities for two years (sec. 23) even if he withdraws at once. He must assume joint liability and becomes unconditionally bound by all the rules (sec. 43 (d) notes) : he is liable to expulsion (sec. 43 (m)), and may be called upon to contribute to the assets of the society (sec. 42 (2) (b))even though debts were incurred prior to his right to obtain all the information required concerning the solvency and good management of the society.

Under the by-laws, a certain proportion of members may insist on a general meeting being called. The Madras Act includes this : the Committee may at any time call a general meeting and shall call one when required in writing by the Registrar or the financing bank or from such number of members as may be specified in the by-laws. In case of default, the Registrar has power to call the meeting.

13. (1) Where the liability of the members of a registered society is not limited by shares, each member shall, notwithstanding the amount of his interest in the capital

Votes of members.

have one vote only as a member in the affairs of the society.

(2) Where the liability of the members of a registered society is limited by shares, each member shall have as many votes as may be prescribed by the by-laws.

The Bombay Act says : No member of any society shall have more than one vote in its affairs, provided that in the case of an equality of votes the chairman shall have a casting vote. Madras repeats this for registered societies and omits clause (2)

The Burma Act says : Each member of a Co-operative Society shall have one vote only as a member in the affairs of the society. Provided that a Co-operative Society which is a member of any other Co-operative Society shall have as many votes as may be prescribed by the by-laws of such other society, and may, subject to such by-laws, appoint any number of its members, not exceeding the number of such votes, to exercise its voting power.

(3) A registered society which has invested any part of its funds in the shares of any other registered society may appoint as its proxy, for the purpose of voting in the affairs of such other registered society any one of its members.

The Bombay and Madras Acts omit the words" as its proxy."

Madras adds : "not disqualified for such appointment" after "members".

See notes to sections 12, 43 (f). Where members desire an enquiry by the Registrar (sec. 35) or dissolution

of the society (sec. 39), the one man one vote principle is prescribed for all societies.

Clause 1 is, of course, the condition of equitable association. A society is an association of individuals with equitable participation and control, hence one man one vote. This, as the Committee on Co-operation recommend, should be the rule in all societies including those with limited liability such as Central Banks. In unlimited liability societies liability is equal and the Act insists on control being equal. The second clause is a concession to the joint-stock idea; in view of the Committee's opinion it is to be hoped that by-laws allowing more than one vote to any member will not in future be approved by Registrars of those provinces which still retain clause (2). Mr. Wolff is very clear on this point: "whatever be the value of the shares it must be not those which determine the voting power of members in the bank. The bank is to be co-operative; that means it is to be a union, not of capitals, but of persons: and whatever be the holding of each member the voting power must be equal as amongst them". It is this rule of equal votes which distinguishes co-operation from co-partnership. It is an absolutely essential element in any true co-operation and is regarded by nearly all authorities as a fundamental principle.[1] Any hard-

1. It does not appear necessary to labour the point. The evidence as to the existing practice was set forth in an article by me, "one man one vote" published in the Bombay Co-operative Quarterly. No Co-operator defends or advocates any other principle, except that in some cases votes may vary with the amount of transactions with the society. The newer acts of different countries all prescribe one member one vote, and nearly all model by-laws in India insist upon it.

The most recent adherents are the Canadian provinces of Saskatchwan, Manitoba and Quebec and now Bombay, which prescribe that each member may only have one vote and may not vote by proxy. The English Co-operative Union introduced a Bill into Parliament in 1924, prescribing amongst other things, that the word "Co-operative" shall be limited to societies which provided for one member one vote in its rules.

ship that might appear to be involved is in reality limited by the restriction in section 5 on the amount of shares which any individual may hold. If this restriction is removed under section 46, in case of Central Banks, the strict adherence to this principle becomes additionally important. It may be noted that even in a joint-stock company there must be a show of hands before there can be a poll, on a show of hands one man has one vote and there are no proxies allowed. It is only when a poll is taken that each member has one vote for each share held by him and proxies are then admitted. The capitalist has no place in co-operation and it is entirely opposed to co-operative principles that the extent of a man's control should depend on the capital he holds in the society.

Voting by proxy is not provided for in the Act except in the case of corporations or societies which may be members. This follows the English Acts. The general rule is that there can be no voting by proxy unless this is specifically allowed by rule or by-law. In Germany, it is forbidden (except in the case of corporations and women) but under the English Act (which is here followed) it may be provided for in the by-laws. The by-laws must be clear and must be strictly adhered to as action taken on a vote secured by irregular proxies might be declared illegal.

The New York State law on productive co-operative societies allows an absent member to send in a written vote provided he shall have been previously notified, in writing, of the exact motion or resolution upon which such vote is taken and a copy of the same is forwarded with and attached to his written vote. The Wisconsin State law has the same provision. This is not voting by proxy but voting in absence. One advantage of disallowing free voting by proxy, is that the rule of one man

one vote is maintained. If a member could bring proxies he would have more than one vote.

Sir F. Nicholson writing of the German prohibition of proxies says : Members cannot exercise their power of voting by proxy. The refusal to admit proxies is deliberately entered so as to bring the members themselves to meetings and get them to take a lively and personal interest in the society and its conduct, and to prevent a few persons from carrying their personal views by means of lightly and ignorantly given proxies. It is a very valuable co-operative principle especially where societies are small as in the Raiffeisen societies. Mr. Cahill agrees : By prohibiting voting by proxy, he writes, the law aims at securing the actual presence of members and maintaining in this way an essential characteristic of a Co-operative Society as a combination of persons as distinct from a mere union of capital. In Italy also, voting by proxy is forbidden except in cases of lawful impediment.

Miss Webb writes : In all, distributive societies in England the rule of one member one vote is in practice, but unless exercised by ballot—as is sometimes allowed in the election of committees—a member can only exercise his power by attending and voting at meetings of the society. It is therefore counted the duty of every member to attend the meetings and take part in the government of his society and in a few of the older societies a fine is inflicted upon members absenting themselves from the general meeting without good cause.

The fourth conference of Registrars wished to have

"no proxies shall be allowed" inserted in this section and applied to all societies.[1]

Clause 3 merely allows an exception to the general rule that no person shall act as a proxy unless he is entitled on his own behalf to be present and vote at the meeting. It would obviously be inconvenient if the only delegate a primary society could send to the Central Bank was a shareholder in the latter Bank. If permitted, the proxy should be in writing: it is apparently exempt from the one anna stamp duty. If considered necessary, the by-laws should provide for its deposit with the society before the meeting. A Bombay Provincial Conference desired that a society should be able to appoint as its proxy a member of another society.

In large societies, there is a tendency to appoint representatives to look after the interests of absent members. The distinction is a fine one, but it is clear that where membership is 500 and over it should be

1. Under sec. 28(2) of the Bihar Act a registered society which is a member of any other registered society shall have as many votes as may be prescribed under the by-laws of such society and may subject to such by-laws appoint any number of its members, not exceeding the number of such votes, to exercise its voting power, provided that no member who is disqualified for such appointment under any rule shall be so appointed. Clause 3 provides that save as provided above, voting by proxy shall not be allowed except with the general or special sanction of the Registrar for any society or class of societies. It may be mentioned that in the case of many Provincial societies voting by proxy has been allowed.

The Co-operative Planning Committee have advised that as plurality of votes may result in a few big men controlling the society, section 13 should be amended so to provide that every member of a society (whatever its liability) shall have one vote irrespective of the number of shares held by him.

In Japan under the Co-operative Enterprise Law of 1948 voting by proxy is allowed but only through another member. No one can act as proxy for more than one member. In U. S. S. R. voting by proxy is prohibited but in the case of large societies with membership scattered over a wide area the general meeting is attended by delegates elected at local general meetings in different districts by the members.

possible to replace the general meeting by a delegate meeting with all the powers of the former.[1]

Restriction on transfer of share or interest.

14. (1) The transfer or charge of the share or interest of a member of a registered society, shall be subject to such conditions as to maximum holding as may be prescribed by the Act or by the rules.

(2) In case of a society registered with unlimited liability a member shall not transfer any share held by him or his interest in the capital of the society or any part thereof unless—

(a) he has held such share or interest for not less than one year, and

(b) the transfer or charge is made to the society or to a member of the society.

Bombay and Burma apply this to societies of limited liability too, but Madras adheres to the old wording. It, however, omits, "or charge" in clause (1). Bombay adds "or property" after "capital" and at the end of (b) adds :—or to a person whose application for membership has been accepted by the Society.

See section 5 and notes thereunder, note on unlimited liability, section 4.

"Interest" here means personal possession or right of control or participation in ownership, the legal concern of a person in the society or the right of enjoyment of advantages (cf. Century Dictionary).

1. Egger : The Co-operative Movement and Co-operative Law : International Labour Review, 1925.

It is the right, title or claim to a share in the society or in some of the uses or benefits pertaining to the society.

In a company, shares are freely transferable as of right unless regulated or restricted by the articles. There may for instance (cf. model articles) be a rule that the Directors may decline to register any transfer of shares, not being fully paid up shares, to a person of whom they do not approve. The Directors may thus pay regard to the reserve liability which might become valueless if the shares passed into the hands of paupers and minors. In an unlimited liability society, the shares do not apparently influence the liability.

In partnership shares are not transferable, but the partners may agree as to a redistribution. In a Co-operative Society the selection of members by qualifications and election is all important, and where the possession of a share is a condition of membership the transfer of such a share must be as carefully guarded as the admission of members[1] As the financial security depends on the liability of the members, it is necessary to restrain rapid changes among those liable. A depositor would never know whether his deposit was safe or not if members changed frequently. The United Provinces have a rule under section 43 (1) that the purchasing member must be approved for that purpose by the Committee of the society.

In a limited liability society transfer to a minor must be restricted by rule under section 43 (d) cf. sections 6, 22 and notes.

In an unlimited liability society the member is presumably over 18 years of age (See sec. 43 (d), or, as in Madras, "has attained the age of majority."

1. The legal pandit points out, correctly enough, that the society must admit the new member before the transfer is effective.

The transfer of shares is disclosed in the register of members which has to be maintained uptodate (sec. 25 and notes and rule under sec. 43 (n)) but this register is not prima facie evidence of the actual transfer but only of its date.

The retiring member continues liable for contributions for two years (sec. 23)

This pronounced restriction on transfer of all shares is characteristic of co-operative and similar societies which are not public companies. In Belgium, the shares are non-transferable : in France and Italy they are not transferable except to members and with the consent of the society. The New York State law on productive co-operative societies has : "no stock shall be transferred without the written consent of the corporation (i.e. society) endorsed on the certificate of stock. The corporation shall have the first right to purchase at par any stock of a shareholder offered for transfer or the stock of any deceased or retiring stockholder." The Californian law adds : "nor shall a purchaser at execution sale or any other person who may succeed by operation of law or otherwise to the property interest of a member, be entitled to membership, or become a member of the association by virtue of such transfer."[1] All limited liability societies would be well advised to create a "share transfer fund" by voting a portion of the annual profits to this purpose. There is no objection to a society holding a number of its own shares in its undivided profits (other than the legal reserve). By this means transferable shares are made withdrawable so far as the holder is concerned, as the latter can sell to the transfer fund instead of having to wait for an individual purchaser. In a joint-stock company, the right to sell or transfer the share is incident to the

1. Powell, p. 47.

ownership, and cannot be controlled by the company (if fully paid-up), although the company may reserve the option to buy the share whenever a member desires to sell.[1] The absence of a provision like section 14(b) from the Companies Act, necessitates a special law for Co-operative Societies, as in America and elsewhere the control of Co-operative Societies registered under Company law has often passed into the hands of business rivals.[2]

The United Provinces has rules (see under section 43(1)) regarding transfer of shares, one of which prohibits a Central Bank from buying its own shares except by way of formal reduction of subscribed capital. This seems to rule out the share transfer fund and is probably due to some misunderstanding. The capital of the bank is not reduced by withholding profits from distribution in order to hold its own shares. In Bihar the Central bank by a resolution passed at a general meeting may buy shares held by an individual at their paid-up value and issue them to societies.

Duties of registered societies[3]

Address of Societies.

15. Every registered society shall have an address, registered in accordance with the rules, to which all notices and communications may be sent, and shall send to the Registrar notice of every change thereof.

The Bombay and Burma Acts add:—within 30 days of such change. Madras omits them.

---

1. Powell, p. 43.
2. Powell, p. 44.
3. It is not an uncommon feature of some co-operative laws to impose on the society the duty of submitting periodical reports to a public authority. In India, this is included in the rules.

Cf. section 146 Indian Companies Act of 1956 and section 24, Friendly Societies Act.

(1) Every Company shall have a registered office to which all communications and notices may be addressed.

(2) Notice in writing of the situation of the registered office and of any change therein, shall be filed with the Registrar, who shall record the same.

As the address has originally to be given in the application (or ought to be, sec. 43(b)) only changes need be notified.

The registered address of course fixes the jurisdiction of the court (rule under sec. 43(1), sec. 42 cls. 4 and 5 etc.), and becomes important in the case of regimental societies.

The object of the address is that all communications may be addressed to it: it need not be the place of meeting and the place of meeting may be changed without notice being sent to the Registrar.

16. Every registered society shall keep a copy of this Act and of the rules governing such society, and of its by-laws, open to inspection free of charge at all reasonable times at the registered address of the society.

Copy of Act, rules and by-laws to be open to inspection.

Burma includes here also the register of members.

Any member of a Company can claim a copy of the memorandum and articles on payment of a fee and the copies filed with the Registrar are open to inspection on payment.

Every member is entitled to obtain all information required concerning the solvency and good management

of the society (Irish by-law). The Friendly Societies Act prescribes that every registered society shall deliver to every person on demand, on payment of a sum not exceeding one shilling, a copy of the rules of the society.

It is to be noted that the rules and by-laws must be open to non-members. This, of course, has special importance to depositors and other creditors. A credit society should also expose in a public place a six-monthly balance sheet (cf. note sec. 43(h)). It must be remembered that Co-operative Societies are societies for public good and hence the public have a right to the know what are their rules and objects so that the advisability of joining may be considered (see notes to sec. 43 (q)).

Failure to comply with this section is an offence in England.

The right to inspect seems to include the right to take copies (Fuller).

Audit.

17. (1) The Registrar shall audit or cause to be audited by some person authorised by him by general or special order in writing in this behalf the accounts of every registered society once at least in every year.

(2) The audit under sub-section (1) shall include an examination of overdue debts, if any, and a valuation of the assets and liabilities of the society.

Bombay adds "the verification of the cash balances" to which Madras adds "and securities."

Burma has "verification of the existence of."

(3) The Registrar, the Collector, or any person authorised by general or special order in writing in this behalf by the Regis-

trar shall at all times have access to all the books, accounts, paper and securities of a society, and every officer of the society shall furnish such information in regard to the transaction and working of the society as the person making such inspection[1] may require.

Bombay says free access, and adds: shall be allowed to verify its cash balances and securities. The directors, manager, and other officers of the society shall furnish to the Registrar or other person appointed to audit the accounts of a society all such information as to its transactions and working as the Registrar or such person may require. Madras includes cash and other properties belonging to or in the custody of the society: and it makes every member liable to furnish any information required.

Bombay has a clause (4): The Registrar and every other person appointed to audit the accounts of a society shall have power when necessary (1) to summon at the time of his audit any officer, agent, servant or member who he has reason to believe can give valuable information in regard to any transaction of the society or the management of its affairs, or (2) to require the production of any book or document relating to the affairs of any cash or securities belonging to the society by the officer, agent, servant or member in possession of such book, document, cash or securities. Madras also gives the auditor power to summon any person in possession or responsible for the custody of any such books, accounts, documents, securities, cash or other properties to produce the same at any place at the headquarters of the society or any branch thereof. For

1. The words "or audit" should be inserted here.

Burma law see section 30 in Appendix. It throws the responsibility for audit on to the society. The power of access in clause (3) is confined to the auditor. Section 33(4) of the Bihar Act lays down that the Auditor should report every transaction which is contrary to the law or by-laws, the amount of any deficiency or loss incurred by the culpable negligence or misconduct of any person and any money or property misappropriated or fraudulently retained by any person. Sections 78 and 79 of the Bengal Act have similar provision.

As the accounts of primary societies are not unoften found to be incomplete and audit is held up due to this sec. 17 of the Bengal Act authorises the Registrar or the Audit Officer (with the approval of the Registrar) to cause the accounts to be written up at the expense of the society. Sec. 80 of the Act provides for the rectification of defects or irregularities pointed out by the Auditor.

Collector—means the Chief Officer in charge of the revenue administration of a district.[1]

It does not include a subordinate of the collector, and the latter cannot now depute a subordinate to inspect the society,

Most countries, by law, require societies to submit their accounts to audit or inspection by some public authority. The original idea is to protect the members against the misconduct or incompetence of the officers, but undoubtedly the great value of a proper audit lies in the increased credit of societies with outsiders and the

1. General Clauses Act, see clause 3(10).

increased confidence of members in their organisation. Audit, in short, is for the benefit of the members.[1]

By the Companies Act, sections 144 and 145, every company must at its annual general meeting appoint an auditor for the next year and he must make a report during that year. If a company fails to do this the directors cannot appoint an auditor behind the backs of the shareholders but must apply to the Local Government. The burden of securing a proper audit of the accounts is thus placed on the company. The Friendly Societies Act also imposes this duty on the society and allows the audit to be conducted by two members; who, of course, must not be office-bearers;[2] but as Mr. Wolff says: we have in the co-operative world everywhere come round to the conclusion that, except in very small societies, the work of one skilled accountant is worth a good deal more than that of the two unskilled members.[3] The tendency in England is to insist upon a stricter observance of the provision of the Act regarding audit.

The audit notes should not be treated as confidential. Usually the central banks receive copies and the Madras

1. Cf. Smith Gordon, Co-operation for Farmers, p. 55:—The stability of a society's business is largely affected by the manner in which its accounts are kept, but in a very large number of farmer's societies, the keeping of the books is absolutely elementary and sometimes non-existent. This difficulty has been dealt with in all countries where the movement is far advanced by insistence upon frequent audits conducted either under government supervision or by some properly authorised central body and in all cases by duly qualified persons. In America, where no such system exists, the result is seen in the frequent and unexpected failure of the societies. It is absolutely necessary that some central body should have power to supervise the auditing of farmers' co-operative societies.

2. The New York State law on agricultural, dairying and horticultural societies, prescribes an auditing Committee of three members who shall not be directors, officers, agents or employees of the association, which shall at least once in each quarter make an examination of its records and property and report the results in writing to the association.

3. Co-operation in India, p. 171.

Committee recommended that these should be given free of charge and the central bank should have facilities for making such further inquiry as it considered necessary to safeguard its own financial interests.

Under the first Act, no charge was to be made in respect of any audit made under this section, but now rules may be framed under section 43(b) regarding the levy of fees. Where societies are affiliated to a Central Federation or Provincial Union, this should possess power of control over auditors. If a society is prepared to employ and pay a chartered accountant or other professionally trained auditor, the Registrar would accept his audit as sufficient under this section [1]

It will be noticed that no explanation is given of the action which the legislature intended to be taken.

---

1. In certain States in India audit is either wholly or mainly departmental. In others departmental and professional audit exist side by side. In the Punjab and in Bihar upto 1938 the audit staff was employed by the Provincial Co-operative Union or Federation. It is desirable that in the case of apex organisations, large central banks and large marketing and processing societies departmental audit should be supplemented by professional audit.

The Co-operative Planning Committee recommended that the Registrar may delegate his audit function to non-official federations. The Rural Credit Survey Committee have suggested that the Audit staff of the Co-operative Department should be strengthened. The Chief Auditor should be made responsible to the Registrar. There should be concurrent audit for apex, central and urban banks and six monthly interim audit for all primary societies. Audit staff should verify periodically that defects pointed out have been rectified. There should be uniform standards of audit classification on an all-India basis.

"The drawback of specialised auditors is that they concern themselves only with accounts and ignore such points as whether the by-laws are being observed, or the committee working properly. In Switzerland, it is held that audit must not only guarantee sound business lines but also show that the statutory principles of Co-operative mutual help, devotion and idealism, are jealously practised" (Darling p. 17).

It has been noticed that due to inadequacy of audit staff heavy arrears in audit work have accumulated. In 1951-52 the percentage of unaudited societies was as high as 71 in Bihar, 51 in Rajasthan, 49 in Assam and 41 in West Bengal.

Section 26 of the Friendly Societies Act says that the auditors shall examine the annual return and verify it with the accounts and vouchers relating thereto, and shall either sign the annual return as found by them to be correct, duly vouched and in accordance with law, or specially report to the society in what respects they find it incorrect, unvouched or not in accordance with law.

The manual on Co-operative Auditing of the English Co-operative Union says: Audit gives confidence to the members. The auditor should direct analysis so as to reveal the points of weakness. His duty does not admit of any interference with the method of management of a society or the control of the officials and employees, he should confine himself to the records of the business rather than to the actual working. He should examine the rules with a view to satisfying himself that the working of the society is in accordance therewith. He should use his position and power by advice given to the Committee, and if necessary to the general meeting, with a view to a sound business policy being adopted.[1]

Audit—may be defined as such an examination of the books, accounts and vouchers of a business, as shall enable the auditor to satisfy himself whether or not the balance-sheet is properly drawn up, so as to exhibit a true and correct view of the state of the affairs of the business, according to the best of his information and the explanations given to him and as shown by the books, and if not, in what respects it is untrue or incorrect.[2]

The auditor must, by the exercise of reasonable skill and diligence, satisfy himself that the books contain

1. Tetlow, p. 19.
2. For this definition and what follows see Spicer and Pegler's 'Practical Auditing'.

a proper record of the transactions entered into. This involves an examination, more or less complete, of the whole of the transactions of the business, and the manner in which they are recorded. The auditor should examine the by-laws of the society, and ascertain that they are duly carried out. The Burma Committee recommended that he should make specific mention of all cases where a loan has been misapplied or where the borrower has disposed of the profits without first repaying the society.

The two principal reasons for which audit is instituted are the detection of fraud and the detection of errors. The prevention of fraud and errors depends upon the deterrent and moral effect of the audit. Frauds may be divided into two classes : defalcations, involving misappropriation either of money or goods, and the fraudulent manipulation of accounts, not involving defalcation. The opportunities of committing fraud by defalcation are so frequent and the method necessary to conceal it so simple that no business is safe from the risk. Misappropriation may be concealed by the inclusion of fictitious payments and by the omission of receipts. The latter class is much the more difficult to detect. The amount of detailed checking which the auditor must perform before he can satisfy himself that no fraud exists, will depend to a great extent on the check exercised by the managing committee. He must test the transactions exhaustively, and, should he find anything irregular, he must then make a complete audit.[1]

In regard to the detection of errors, it must be remembered that what at first sight appear to be merely clerical errors are often ultimately found to be due to fraudulent manipulation, and it is therefore important

1. Secs. 62 & 63 of Orissa Co-operative Societies Act of 1951 lay down the scope of audit and the Audit Report.

for the auditor carefully to examine the cause of any error, however, slight it may appear to be. Errors of omission are very difficult to detect, and may not be discovered until the accounts of previous years are compared. An error of commission arises when a transaction is incorrectly recorded; either wholly or partially. The error may not be discovered until the transaction is vouched or otherwise checked.

Clerical errors are due to posting an item to a wrong account, or to an incorrect posting. Where an item is posted to a wrong member, the balance remains correct and only careful check will lead to the detection of this kind of mistake. Where an item is posted to the credit side instead of the debit side or vice versa, the result will be a discrepancy of double the amount.

In companies where the most important result of the audit is to disclose the profit available for dividend, there are many errors which are unimportant because they do not affect the net profit which may be divided amongst the shareholders. But in a Co-operative Society, profits have not the same predominating influence; while correct accounting is absolutely necessary if the society is to survive. A joint-stock company cannot be described as unsuccessful if the shareholders lose no money by it. A co-operative society can be described as unsuccessful, if the members lose no money by it yet fail to gain any advantage from it. It is hardly an exaggeration to say that proper audit is more important in a Co-operative Society than in a Joint-stock company. It is not every member who is responsible for any loss incurred. The Committee are elected in general meeting, but once elected, their powers are very complete. Even the most honest or well-meaning member of the Committee may be liable to err. The members must have an independent opinion on the management of their Committee. This does not

arise from mistrust, but from ordinary business caution. It is easily understood that, among friends, there may be some hesitation on insisting on an independent audit: audit though primarily intended for the members, is also absolutely necessary for the protection of the members of the Committee against charges which cannot be supported. Regarded from every point of view, audit is absolutely essential to the successful, as well as to the smooth, administration of every society.

In England refusal by an officer to furnish information required is an offence under the Act. In India it is left to the Penal Code[1] except in Bombay where sections 60 and 61 deal with offences, in Burma where a penal clause is added to this section and in Madras where section 52 covers the case.

Privileges of Registered Societies

Societies to be bodies corporate.

18. The registration of a society shall render it a body corporate by the name under which it is registered, with perpetual succession and a common seal, and with power to hold property, to enter into contracts, to institute and defend suits and other legal proceedings and to do all things necessary for the purpose of its constitution.

1. The need of a penalty in case of contumacy is illustrated by Sir T. Y. Russell's evidence before the House of Lords' Committee on the Thrift and Credits Bill to the effect that several credit banks in Ireland refused to let the auditor audit them. There should be imposed on the officers the duty to show the books, and a penalty should be provided. Madras has now a rule empowering the Registrar or anyone authorised by him under this section to require the production of any books, accounts, documents, securities, and the cash. The summons is to be addressed to the person in possession of or responsible for the custody of the books, etc., and may be tendered to him, or to some adult member of his family, or left at his place of abode or affixed to it or sent by registered post. Bombay has inserted the essential portion in a new clause (4) to section 17 of this Act.

Madras for the last three words substitutes: for which it was constituted.

Cf. Indian Companies Act of 1956, section 34, clause 2 runs: "the subscribers.........shall be a body corporate by the name contained in the memorandum, capable forthwith of exercising all the functions of an incorporated company, showing perpetual succession, etc., common seal......"

As the society is a body corporate, it is necessary to prescribe a Committee with legal power to represent it. In Germany where societies are not bodies corporate "the Co-operative Society shall be represented legally and otherwise by the Committee of management."

The corporate body ceases to exist when registration is cancelled (sec 41). The effect of incorporation is to protect individual members from suits by creditors: no legal proceedings can lie against a member of a society individually in respect of an obligation of the society: the society has to be sued and in case of default it is the society and not the individual members which goes into liquidation (see sec. 42 and notes). The principles relating to bodies corporate are the same both as regards companies under the Companies Act and incorporated societies under the Co-operative Societies Act. As the Full Bench of the Patna High Court have pointed out,[1] the members are not liable to have executions issued against them in respect of judgments obtained against the society. The members can only be reached individually by the process of winding up......whether the liability of a society is limited or unlimited can only affect the members when they come to contribute to the liabilities of the society in the winding-up. An exception to this in favour of the Crown is embodied in

1. Harihar Prasad, Gaya Central Co-operative Bank v. Bansi Missir and others—I. L. R., XI., Patna. p. 174.

arise from mistrust, but from ordinary business caution. It is easily understood that, among friends, there may be some hesitation on insisting on an independent audit: audit though primarily intended for the members, is also absolutely necessary for the protection of the members of the Committee against charges which cannot be supported. Regarded from every point of view, audit is absolutely essential to the successful, as well as to the smooth, administration of every society.

In England refusal by an officer to furnish information required is an offence under the Act. In India it is left to the Penal Code[1] except in Bombay where sections 60 and 61 deal with offences, in Burma where a penal clause is added to this section and in Madras where section 52 covers the case.

Privileges of Registered Societies

Societies to be bodies corporate.

18. The registration of a society shall render it a body corporate by the name under which it is registered, with perpetual succession and a common seal, and with power to hold property, to enter into contracts, to institute and defend suits and other legal proceedings and to do all things necessary for the purpose of its constitution.

---

1. The need of a penalty in case of contumacy is illustrated by Sir T. Y. Russell's evidence before the House of Lords' Committee on the Thrift and Credits Bill to the effect that several credit banks in Ireland refused to let the auditor audit them. There should be imposed on the officers the duty to show the books, and a penalty should be provided. Madras has now a rule empowering the Registrar or anyone authorised by him under this section to require the production of any books, accounts, documents, securities, and the cash. The summons is to be addressed to the person in possession of or responsible for the custody of the books, etc., and may be tendered to him, or to some adult member of his family, or left at his place of abode or affixed to it or sent by registered post. Bombay has inserted the essential portion in a new clause (4) to section 17 of this Act.

Madras for the last three words substitutes: for which it was constituted.

Cf. Indian Companies Act of 1956, section 34, clause 2 runs: "the subscribers.........shall be a body corporate by the name contained in the memorandum, capable forthwith of exercising all the functions of an incorporated company, showing perpetual succession, etc., common seal......"

As the society is a body corporate, it is necessary to prescribe a Committee with legal power to represent it. In Germany where societies are not bodies corporate "the Co-operative Society shall be represented legally and otherwise by the Committee of management."

The corporate body ceases to exist when registration is cancelled (sec 41). The effect of incorporation is to protect individual members from suits by creditors: no legal proceedings can lie against a member of a society individually in respect of an obligation of the society: the society has to be sued and in case of default it is the society and not the individual members which goes into liquidation (see sec. 42 and notes). The principles relating to bodies corporate are the same both as regards companies under the Companies Act and incorporated societies under the Co-operative Societies Act. As the Full Bench of the Patna High Court have pointed out,[1] the members are not liable to have executions issued against them in respect of judgments obtained against the society. The members can only be reached individually by the process of winding up......whether the liability of a society is limited or unlimited can only affect the members when they come to contribute to the liabilities of the society in the winding-up. An exception to this in favour of the Crown is embodied in

1. Harihar Prasad, Gaya Central Co-operative Bank v. Bansi Missir and others—I. L. R., XI., Patna, p. 174.

section 44. If the society is not a corporate body, the liability of each member is really unlimited and anyone may be sued by a creditor. In the case of corporate body, the members are only liable to contribute towards any deficiency in the assets in the course of liquidation. This is styled "unlimited contributory liability" (cf. Cahill). The Agricultural Societies in Ireland, registered under the Friendly Societies Act. are not corporate bodies, but English societies registered under the Industrial and Provident Societies Acts are. The result is the societies under the former Act "shall have one or more trustees" in whom property is vested.

Section 18 above follows section 21, Industrial and Provident Societies Act, 1893, except that the latter imposes limited liability. German societies do not appear to be corporate bodies and hence individual members can be sued by creditors under their unlimited liability.

Privileges—are conferred on the condition that the societies adhere to their principles, they may be withdrawn <sec.46> if they depart therefrom. Accordingly they must be jealously guarded by a strict adherence to principles.

Prior claim of society

19. Subject to any prior claim of the Government in respect of land-revenue or any money recoverable as land-revenue or of a landlord in respect of rent or any money recoverable as rent, a registered society shall be entitled in priority to other creditors to enforce any outstanding demand due to the society from a member or past member—

(a) in respect of the supply of seed or manure or of the loan of money for

the purchase of seed or manure upon the crops or other agricultural produce of such member or person at any time within eighteen months from the date of such supply or loan :

(b) in respect of the supply of cattle, fodder for cattle, agricultural or industrial implements or machinery, raw materials for manufacture or of the loan of money for the purchase of any of the foregoing things—upon any such things so supplied, or purchased in whole or in part from any such loan, or on any articles manufactured from raw materials so supplied or purchased.

Madras adds a clause (2), the priority created by subsection (i) in favour of a registered society shall be available against any claim of the Government from a loan granted under the Land Improvements Loans Act, 1883, after the grant of the loan by the society.

The claim referred to is one in a judicial proceeding, the section does not confer any summary power of realisation on a society. The Friendly Societies Act gives a registered society priority in the case of the death or bankruptcy of an officer in respect of any money or property of the society held by him: on demand by the society, the heirs, trustees, etc. must pay the money or deliver the property in preference to any other debt or claim against the estate of the officer.

The Calcutta High Court has ruled that an outside decreeholder can attach and sell a crop or other property covered by this section in priority to a society unless the society also obtains a decree in its favour or holds a charge under section 20: the Committee favoured an amendment to this section making the lien a charge on the property in respect of which the loan was granted (para 70): and all Local Governments seem to be agreed that the "lien" should be converted into a "charge" so that a society may have a prior claim without obtaining a decree.

Bombay had enacted that these claims shall be a first charge in section 24. The charge did not prove of much practical value hence this section was amended in 1948. Burma omits this section altogether as the prior claim was of little value and was never enforced, and the effect of altering this to a 'first charge' was doubtful. The English Agricultural Credits Act, 1928, provides for charges in favour of banks approved by the Minister: it is described as an agricultural charge: section 11 enacts that if, with intent to defraud, any farmer who has created an agricultural charge fails to comply with the obligations imposed or removes or suffers to be removed from his holding the property subject to the charge he shall be liable to penal servitude for three years. The Committee on Co-operation in Burma recommended legislation of this nature for India. The recommendation of the Madras Committee in favour of a charge may therefore be considered obsolete, and it is interesting to note that the

new Act does not alter the old wording and so does not adopt Bombay's lead.[1]

The exact meaning of this section is not clear. Already, under section 60, Civil Procedure Code, where a judgment debtor is an agriculturist, his implements of husbandry and such cattle and seed grain as may, in the opinion of the court, be necessary to enable him to earn his livelihood as such, and such portion of agricultural produce or of any class of agricultural produce as may have been declared to be free from liability under the provisions of section 61, are not liable to attachment. The section gives no prior claim to land purchased or redeemed from money lent by the society. The law of the Philippines constitutes these loans a lien ranking in priority before every other claim, mortgages alone excepted. In Austria, credit societies have a lien

---

1. Section 47(1) of the Bengal Act has converted the prior claim to a first charge upon (a) agricultural produce for supplies or loans for the conduct of agricultural operations (b) agricultural produce for loans to provide the means of paying irrigation facilities (c) agricultural produce, cattle, implements, warehouses for loans advanced for providing these (d) raw materials or any articles manufactured from raw materials or with implements or machinery purchased from such loan. This also covers charge on land redeemed by a member or house purchased or constructed for which the loan was incurred. Bihar has similar provision under sec. 23. As under sec. 16 of the Bihar Act it is possible for a society to lend to a non-member with the sanction of the Registrar. This debt under sec. 23(A) will be be a first charge on the property of the non-member. Under sec. 57A the Registrar may issue orders for distraint of produce either standing on the field or gathered, for the recovery of the debt. Sec 47(1) of the Bengal Act created this first charge "notwithstanding anything contained in sections 60 and 61 of the Code of Civil Procedure or in the Bengal Tenancy Act of 1885." Sec 24 of the Bombay Act as amended in 1948 provides that no property or interest which is subject to a charge shall be transferred in any manner except by way of lease for a term exceeding ten years without the previous permission of the society and anyone who transfers such property is liable to be punished with imprisonment or fine. Under sec. 24A an applicant for loan must make a declaration creating a charge on the land owned by him for the amount of the loan to be sanctioned at that time and also in future. He shall not alienate the whole or any portion of this land but he may with the permission of the society dispose of standing crops.

on all the movables of a borrowing member which precedes that of any other of his creditors, after he has been once admitted to membership.[1] In Italy, a borrower is prohibited from delivering any goods (over which the society has a prior claim) to the buyer, until the debt incurred to the credit institution has been discharged. To do so is a criminal offence.[2]

In Belgium, loans to agriculturists may be secured by a special privilege, chargeable upon the produce, stock furniture etc., of the farm. Sir F. Nicholson says the privilege is granted to all who lend to agriculturists, whether bank or private lender, in order to ensure the granting of credit to agriculture on easy terms by giving lenders special facilities for recovering their dues. In England, a farmer could give a bill of sale over his chattels. In Italy, institutions granting agricultural credit may secure a special privilege in guarantee of their loans upon the crops of the year, upon the produce of farmers stored in the farm-house and buildings and upon the stock, implements, and furniture of the farm.[3]

Charge and set off in respect of shares or interest of member.

20. A registered society shall have a charge upon the share or interest in the capital and on the deposits of a member or past member and upon any dividend, bonus or profits payable to a member or past

1. Herrick, p. 376.

2. International Bulletin, December 1916, p. 82.

3. Sec. 48 of the Bengal Act authorises co-operative irrigation societies to levy water rates upon non-members possessing land within the irrigable area provided the land possessed by the members of such society comprise not less than 60 per cent of the cultivated land included in the irrigable area. Similar provision for levy of embankment protection rates on non-members has been made under sec. 49. In both these cases, dues are recoverable in the same manner as from members, past members and deceased members.

member in respect of any debt due from such member or past member to the society, and may set off any sum credited or payable to a member or past member in or towards payment of any such debt.

A company has a lien on the shares of its members. In the German Act "the sum paid up with respect of shares of members may not while membership lasts be accepted as security in its business with members. Members cannot have the value of their share taken into account in the settlement of accounts with the society" (Cahill). Industrial and Provident Societies Act, section 23 (2), "a registered society shall have a lien on the shares of any member for any debt due to it by him and may set off any sum credited to the member thereon in or towards the payment of such debt."

The words "set off" are not used in a strictly legal sense, but more in a business sense, as indicating that the society may deduct or write off the amount of a member's debt from the sum credited as paid on his share, and therefore, so long as the society is carrying on business, it may *bona fide* avail itself of this section (Fuller).

The model articles of a company give a company a lien on every share (not fully paid-up) and on dividends thereon for all moneys due on the share, and the company may sell the share to enforce its lien without resort to the Court.

It would be quite absurd for a member to be able to set off his share in the society against the society's claim against him for money owed. The shares are part of the capital of the society and are security for the creditors and not for the debtors. Unfortunately such a set-off was freely permitted in Burma with regrettable results.

Interest—See note to section 5.

Bonus—A sum given or paid over and above what is required to be paid or is regularly payable (Century Dicionary).

The Madras Act adds "or deceased" and "or the estate of a deceased member" after "past" and "past member" and so places the interest of a deceased member and any sums due to his estate on a footing similar to that of present and past members.

Shares or interest not liable to attachment.

21. Subject to the provisions of section 20, the share or interest of a member in the capital of a registered society shall not be liable to attachment or sale under any decree or order of a Court of Justice in respect of any debt or liability incurred by such member, and neither the Official Assignee under the Presidency-towns Insolvency Act, 1909 nor a Receiver under the Provincial Insolvency Act, 1920, shall be entitled to or have any claim on such share or interest.

Bombay includes in this exception the share or interest in any provident fund established under section 41 of the local Act.

The word "capital" here does not refer to the whole funds of the society, or the working capital, as otherwise a member's share or interest in his deposit would not be liable to attachment. It apparently refers to the capital owned by the members in their corporate capacity, i.e. the society's owned capital. The Government of India expressly refrained from exempting deposits from attachment as they did not think that thrift should be encouraged wholesale at the expense of

the legitimate creditor.[1] Thus the deposits, dividends and interest on deposits of loans are not exempt. As one of the chief objects is to encourage thrift, this special privilege was accorded to protect savings in the form of shares. It was originally proposed to exempt deposits up to Rs. 100 placed with a society for a year, but this was omitted from the bill.

In the German Act a creditor of a member may (under restrictions) attach the interest of the member and then give notice of the member's withdrawal so as to secure payment of the interest attached.

Note that this exemption only applies to shares of a registered society, so that on dissolution as soon as the registration is cancelled (secs 39 and 40) the shares would become liable to attachment if no liquidator were appointed to take charge of the assets.[2]

For the meaning of the word "interest" in the section, see note to section 5.

Transfer of interest on death of a member.

22. (1) On the death of a member a registered society may transfer the share or interest of the deceased member to the person nominated in accordance with the rules made in this behalf, or, if there is no person so nominated, to such person as may appear to the Committee to be the heir or legal re-

---

1. But under section 60, Civil Procedure Code, exemption from attachment is granted to all compulsory deposits or other sums in or derived from any fund to which the Provident Funds Act, 1897, for the time being applies in so far as they are declared by the said Act not to be liable to attachment.

2. Sec. 39 of the Bihar Act includes also "contributions to a registered society" by a member as not liable to attachment. Sec. 64 of the Bengal Act provides that the share or interest of a member in any provident fund established under sec. 59" shall not be liable to attachment. This provident fund is created for the members, officers or servants of the society out of contributions made by them.

presentative, as the case may be, a sum representing the value of such member's share or interest, as ascertained in accordance with the rules or by-laws:

Provided that:—

(1) in the case of a society with unlimited liability, such nominee, heir or legal representative, as the case may be, may require payment by the society of the value of the share or interest of the deceased member ascertained as aforesaid;

(ii) in the case of a society with limited liability, the society shall transfer the share or interest of the deceased member to such nominee, heir or legal representative, as the case may be, being qualified in accordance with the rules and by-laws for membership of the society, or on his application within one month of the death of the deceased member to any person specified in the application who is so qualified.

(2) A registered society may pay all other moneys due to the deceased member from the society to such nominee, heir or legal representative, as the case may be.

(3) All transfers and payments made by a registered society in accordance with the

provisions of this section shall be valid and effectual against any demand made upon the society by any other person.

Bombay allows the society to transfer within a period of one year the share or interest to the nominee if duly admitted a member of the society; if there is no nominee the transfer may be made to the heir or legal representative if duly elected a member of the society, or it may pay a sum representing the value of such member's share or interest. The nominee, heir or legal representative may require payment within one year.

For clause (2) the Bombay Act has:—"a society shall, unless prevented by an order of a competent court, pay". For the Burma sections (19 and 20) see Appendix. They are far from being an improvement on the original. They set up a curious undefined distinction between transfer, payment and disposal, and contain the unfortunate mistake of making it obligatory on a society with limited liability to pay the value of deceased member's shares to the nominee. This provision requiring the repayment of share capital even by Central Banks holding deposits is expressly opposed to section 19 (1) Industrial and Provident Societies Act which rules: No registered society which has any withdrawable share capital shall carry on the business of banking. The Burma Committee recommended the addition of a proviso to the effect that nothing in these sections should be read as authorising any society with limited liability holding deposits or loans to reduce its paid-up capital.

Interest—see note to section 5.

This section follows sections 56, 57 and 58, Friendly Societies Act. There, however, the same procedure is extended to cases of a member's becoming insane.

Rules may be made under section 43 (n), under

which the matter is further discussed. It should be noted that only one person may be nominated but Bombay has "person or persons nominated". In England, an amendment allowing more nominees than one was carried for the Industrial and Provident Societies Act but not for the Friendly Societies Act.

Under section 6, members at the time of registration must be over 18 years of age, but the maintenance of this qualification is not provided for. Presumably a minor member cannot make a nomination, and minor son of a deceased member need not be accepted as a member: the society is not bound to accept the heir (major or minor) or any nominee as a member. The general rule is that the heirs of a deceased member are not recognised as members until one of them is accepted by the Committee as representative of the daceased: if no such representative is elected, the heirs are entitled to repayment of the value of the share or interest if the liability of the society is unlimited. In this case section 24 gives the society ample protection, as presumably the value of the share returned is but a small fraction of the total assets of the estate available in case of need. In a society of limited liability, the value of the share is either the whole (fully paid-up) or a large fraction (partly paid up) of the liability and it would obviously be inconvenient to part with it. Accordingly, in a society with limited liability, the value of the share of a deceased member cannot be paid back (cf. Proceedings of Ninth Bengal Conference). Yet, mentioned above, the Burma Act makes this obligatory[1].

1. Sec. 71 of the Bengal Act provides for the disposal of the share or interest of an expelled, resigned or insane member. His share or interest shall be transferred to another person qualified to be the transferee under sec. 68 and the value shall be paid to the member or if he is insane to any person appointed to manage his properties under the Indian Lunacy Act of 1912.

In joint-stock companies only executors or administrators are recognised by the Company as entitled to the share, but the Directors have the same right to decline registration of transfer as they have in ordinary cases.

The Government of India have explained that the question of the relations of a society to the minor heirs of deceased members is, subject to this section, left to the operations of the ordinary law. Thus, if there is a liability on the share held by a minor, the society should take action against the legal representatives, executors or administrator, or may apply to the court for the appointment of a guardian and failing satisfaction it may force the estate into bankruptcy and so obtain a due proportion of the assets. It may apply to have the estate administered by the Court. If the member dies insolvent, the society may prove for the value of the uncalled portion of the share.

The period of one month in proviso (ii) might suitably be extended if any difficulty is actually experienced. Bombay allows one year.

The value of a share is not necessarily the nominal value, it does not include anything on account of the reserve fund (which is indivisible) but is apparently liable to deduction for loss incurred by the society. The value of the share may be ascertained from the last annual balance-sheet. The by-laws of Indian societies usually prescribe that the "value of the share in no case be more than the sum received by the society in payment thereof."

Clause 3 protects the society from litigation. Claimants must sue the nominee without joining the society as a party. Cf. Friendly Societies Act : the next-of-kin or lawful representative of the deceased member shall have remedy for recovery of the money, so paid, against the person who has received that money.

If the nominee dies, the Committee can take action

as if there were no person nominated. The Committee would, of course, accept as legal representative anyone holding a succession certificate, where there was no nominee. Where there was a nominee, the Committee could presumably pay the nominee and leave the certificate holder to deal with him.

Refusal to pay the share or interest to the person nominated is an offence in England.

The Act does not provide any corresponding summary procedure for disposing of the deposit of a non-member who dies. Section 31 of Burma Act applies the Government Savings Banks Act to such cases.

Liability of past members.

23. The liability of a past member for the debt of a registered society as they existed at the time when he ceased to be a member shall continue for a period of two years from the date of his ceasing to be a member.

This section is intended to protect creditors by restricting a member from shuffling off his liability and by making liable for debts one who has enjoyed benefits. It applies to joint-stock companies: section 426 of Indian Companies Act of 1956 provides that a past member is liable to contribute on winding-up unless he ceased to be a member for one year or upwards before the commencement of the winding-up. He is not liable to contribute in respect of any debt or liability contracted after he ceased to be a member and is not called upon unless it appears to the court that the existing members are unable to satisfy the contributions required. In the case of limited liability societies the contribution (sec. 42 (2) (b)) is limited to the sum uncalled on the shares and in certain cases to dividends received.

The debts referred to are debts to third parties and the expenses of winding-up, and the period of two years

applies to those only. It does not curtail limitation in respect to sums owed by past members to existing societies. It would appear that no call can be made on a past member except under section 42(2) (b). The rule is a fair and reasonable one. Mr. Wolff writes that, by strict right, the outgoing member is liable in respect of every liability incurred during his membership without limit of time. The fixing of a period within which a past member can be called upon to contribute is a matter of convenience only. In France members are not free from their responsibility until after the settlement of engagements contracted by the society before their withdrawal. In Belgium the liability continues for five years, in Greece for three years, in Italy for two years. In England, it only applies to those who ceased to be members within one year prior to the commencement of winding-up. The past member cannot seek to liquidate his liability by promoting the dissolution of the society (cf. sec. 39(1) which refers only to members).

Bengal has, in view of this section, framed a rule that no past member of a society with unlimited liability shall be eligible for membership of another such society except with the special permission of the Registrar. By a proviso to section 26(2) of the Burma Act a past member was not to be liable to contribute in respect of any debts of the society which could be satisfied by contributions from present members. This clearly enables unscrupulous members to throw the whole burden on to the richer ones by withdrawing before them. The Burma Committee pointed out the injustice.

As they existed at the time—This may include debts contracted before the member joined, as in the case of ordinary companies. In Germany and Greece this is specially provided for: a member on joining assumes liability for all debts existing at the time he joined, but in the Irish rules liability is limited to debts contracted

during the period of membership. This seems to be unworkable as it is the deficiency of assets which has to be made good. The English Act provides that no individual, society or company shall be liable to contribute in respect of any debt or liability contracted after he or it ceased to be a member. The wording of the above section clearly includes this meaning. In order to define the liability German societies assume that membership ceases from the end of the financial year and so makes the annual balance-sheet the basis for the calculation of the debts as they existed at the time.

The South African Act contains the sensible provision that the liability of a past member ceases in all respects as soon as the financial statements of the society signed by the auditor disclose a credit balance in favour of the society.

Apparently a past member is bound by any alteration of the rules carried out subsequent to his withdrawal which may enhance his liability, subject, of course, to the proviso "as they existed at the time". This may seem startling, but it merely means that while a member has the right to withdraw at the moment a society proposes to incur a liability to which he objects, he does not thereby escape liability for his share in any measure the society may deem it advisable to ake to meet responsibilities incurred while he was yet a member.

Past member—is a person who has legally been a member and has ceased to be such by forfeiture, cancellation, surrender, or transfer of his shares (Companies Act) but not, apparently by death. The date on which he ceased to be a member would be proved from the register of members (sec. 25 (b)[1]. This pro-

1. Cessation of membership will take effect from the date on which the letter of resignation reaches the society. (Govinda Chettiar V Uthukottai Co-operative Society. A. I. R., 1940, Mad 831)

vision should tend to make societies very cautious in granting loans for periods longer than two years as liability for loss on longer term loans could be avoided.

Madras has replaced "at the time" by "on the date". It has also applied this section to estates of deceased members and so increased the period from one year to two.

This section does not limit the period of liability of a withdrawing or past member for the debt of a member for whom he has stood surety. His liability as surety is a separate contract altogether from his liability as member.

24. The estate of a deceased member shall be liable for a period of one year from the time of his decease for the debts of a registered society as they existed at the time of his decease.

Liability of the estates of deceased members.

See notes to section 23.

Also see notes under section 22, which deals with the case where the account is in favour of the member. The date of decease would have to be independently proved unless it were entered in the register of members (sec. 25 (b)). Under the by-laws membership ceases at death in the case of societies with unlimited liability, so the register should supply evidence of the date.

The heirs or representatives of a deceased member cannot promote the dissolution of a society in order to liquidate their liability (sec. 39 (1)).

This section seems to refer only to contributions fixed by the liquidator (sec. 42 (2) (b)) or to a levy by the society to cover bad debts. But, by a curious omission, the reference in section 42 (2) (b) is to members and past members only, and not to the estates of deceased members. Once payment of the deceased

member's share or interest is made to the nominee, the society must have resort to the heirs, executors or administrators of the estate, presumably by civil suit.

In Greece the period of liability is three years and the Madras Committee recommended extension to two years, which has now been incorporated in the new Act (cf. notes to section 23).

Register of members.

25. Any register or list of members or shares kept by any registered society shall be prima facie evidence of any of the following particulars entered therein :—

(a) the date at which the name of any person was entered in such register or list as a member;

(b) the date at which any such person ceased to be a member.

Cf. section 164. Indian Companies Act of 1956. Note that the register is not prima facie evidence of the names, addresses, occupations of members and number of shares held. The register in fact must be supplemented by independent evidence to prove that a person named therein is a member. This register, from the legal aspect, is one of the most important documents a corporate body maintains. It discloses the list of persons liable. It is accordingly compulsory under most Acts and should have been made obligatory here. The Bombay Act requires every society to keep open to inspection a register of its members (see Appendix). It must be kept up-to-date to ensure the satisfactory application of sections 23, 24, and 42 (b), it must record the effect of transfers (sec. 14) and, of course must, contain the dates of deaths of members (as membership

ceases on death). Its maintenance should be made compulsory by rule under section 43 (k) and there should be a rule under section 43 (g) imposing responsibility upon the Committee. Cf. German Act: The Committee must maintain a list of members and keep it up-to-date. This register must always be open to inspection by members. A copy has to be sent to the Registrar every year at whose office, presumably, it is open to inspection. The register might suitably have been included in section 16 (see notes to sec. 43 (1)).

Proof of entries in Societies' books.

26. A copy of any entry in a book of a registered society regularly kept in the course of business, shall, if certified in such manner as may be prescribed by the rules, be received, in any suit or legal proceeding, as prima facie evidence of the existence of such entry, and shall be admitted as evidence of the matters, transactions and acccounts therein recorded in every case where, and to the same extent as, the original entry itself is admissible.

For the Bombay section, see Appendix.

This, almost word for word, follows section 4, Bankers' Books Evidence Act (XVIII of 1891). The books include ledger, day books, cash books, account books, and all other books used in the ordinary business of a bank.

Section 5 of the Act runs: no officer of a bank shall in any legal proceeding to which the bank is not a party be compellable to produce any banker's book, the contents of which can be proved under this Act or to appear as a witness to prove the matters .....therein recorded unless by order of the Court or a judge (of

a High Court) made for special cause.[1] The Court under section 6 may give liberty to a party to inspect the books.

Burma enacts this as section 12 (2) but confines it to "such Co-operative Societies as the Local Government by general or special order may direct", Madras enacts this under Sec. 27(2). The object of extending the exemption to books after liquidation is not quite clear.

Book—See notes to section 43(h). To be a book used in the ordinary business of a bank (or as here expressed, regularly kept in the course of business) it need not be in use every day: it is sufficient if it be a book kept by the banker for reference if necessary. In litigation to which the bank is not a party, there is power, for special cause, to order the production of bank books, the content of which could be proved under the Bankers' Books Evidence Act. It would seem, however, that, short of some recalcitrancy on the part of the banker, no such order should be made.[2] Unfortunately Courts are inclined to ignore this section of the law.

Certified—See notes to section 43 (j).

To the same extent as the original entry—Cf. section 34, Evidence Act: Entries in books of account, regularly kept in the course of business, are relevant whenever they refer to a matter into which the Court has to enquire but such statements shall not alone be sufficient evidence to charge any person with liability.

The following sections of the Evidence Act are important in this connection. Section 130: No witness who is not a party to a suit shall be compelled to produce his title-deeds to any property or any document in virtue of which he holds any property as pledgee or mortgagee......unless he has agreed in

1. Sec. 27(2) of the Madras Act has similar provision.
2. Paget: Law of Banking.

writing to produce them....... Section 65: Secondary evidence may be given of the existence, condition or contents of a document in the following cases:—

(f) When the original is a document of which a certified copy is permitted by this Act, or by any other law in force in British India, to be given in evidence. In case (f) a certified copy of the document but no other kind of secondary evidence is admissible.

In dealing with publicity, it has been shown that deposit accounts, and perhaps loan accounts also, should not be open to inspection even by members much less by the public, and the above provisions protect these accounts from being called into Court at the request of any malcontent. The whole of a society's books cannot be called into Court as they contain accounts of persons entirely unconnected with the case. For the books which may be open to inspection, see notes to section 43 (1).

Exemption from Compulsory registration of instruments relating to shares and debentures of registered society

27. Nothing in section 17, sub-section (1) clauses (b) and (c), of the Indian Registration Act, 1908 shall apply to—

(1) any instrument relating to shares in a registered society, notwithstanding that assets of such society consist in whole or part of immoveable property, or

(2) any debenture[1] issued by any such

1. Debenture is a writing acknowledging a debt and, specifically, an instrument for the repayment of money lent, e.g., an obligation of a corporation issued in a form convenient to be bought and sold as investment (Century Dictionary). In ordinary business it is an acknowledgment of a debt with a date for repayment, which can be bought and sold in open market. It may be a simple debenture carrying no charge on the assets, or a mortgage debenture carrying either a fixed or a floating charge on some or all of the assets of the corporation issuing it.

society and not creating, declaring, assigning, limiting or extinguishing any right, title or interest to or in immoveable property except in so far as it entitles the holder to the security afforded by a registered instrument whereby the society has mortgaged, conveyed or otherwise transferred the whole or part of its immoveable property or any interest therein to trustees upon trust for the benefit of the holders of such debentures : or

(3) any endorsement upon or transfer of any debenture issued by any such society.

This exemption was not granted under the Act of 1904. Section 17. (1) The following documents shall be registered if the property to which they relate is situated in a district in which, and if they have been executed on or after the date on which, Act No. XVI of 1864, or the Indian Registration Act, 1866, or the Indian Registration Act, 1871, or the Indian Registration Act, 1877, or this Act came or comes into force, namely :—

(b) other non-testamentary instruments which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immoveable property ;

(c) non-testamentary instruments which acknowledge the receipt of payment of any considera-

tion on account of the creation, declaration, assignment, limitation, or extinction of any such right, title or interest.

Power to exempt from income tax stamp duty and registration fees

28. (1) The Governor-General in Council, by notification in the Gazette of India, may in the case of any registered society remit the income-tax payable in respect of the profits of the society, or of the dividends or other payments received by the members of the society on account of profits.

(Note:—The Burma Act, omits this clause. The notification below refers to societies registered under this Act however).

(2) The Local Government, by notification in the local official Gazette, may in the case of any registered society or class of registered societies, remit.

(a) the stamp duty with which, under any law for the time being in force, instruments executed by or on behalf of a registered society or by an officer or member and relating to the business of such society or any class of such instruments, are respectively chargeable.

(b) any fee payable under the law of registration for the time being in force.[1]

---

1. This section was amended by the devolution Act XXXVIII of 1920.

The Burma Act omits clause (i) and also repeals the whole Act of 1912. The Bombay Act retains the clause.

In sub-section (2) (a) the Madras Act after "instruments" in the seventh line adds : "or decisions, awards or orders of the Registrar or arbitrators under this Act."

The Government of India (Finance Department-Central Revenues) Notification No. 25 dated 25th August 1925 as amended by Notification No. 26 dated 25th June, 1934 and Notification No. 33 dated 18th August 1945 reads thus :—"The profits of any co-operative society other than the Sanikatta Saltowners' society in the Bombay State for the time being registered under the Co-operative Societies Act of 1912, the Bombay Co-operative Societies Act, 1925 or the Madras Co-operative Societies Act 1932 or the dividends or other payments received by the member of any such society out of such profits shall be exempt from the tax payable under the Income Tax Act.

Explanation:—For this purpose the profits of a co-operative society shall not be deemed to include any income, profits or gains from— (i) investments in (a) securities of the nature referred to in section 8 of the Income Tax Act, or (b) property of the nature referred to in section 9 of the Act, (ii) dividends, or (iii) the other sources referred to in section 12 of the Indian Income Tax Act.

This notification consists of two distinct parts. The first relates to the profits. Co-operators in England have always maintained that there is no such thing in their transactions as profits in the commercial sense of the word. They allow a fair interest to capital and regard the remainder of the surplus as the result of over-charging their members for services rendered, and they return this surplus by way of dividend on transac-

tions or a bonus on wages. The Treasury finally admitted the argument and Parliament has ratified this.[1] But steps have been taken to prevent abuse. Co-operators argue that their sole aim is the public good and accordingly the public should not be excluded from participation. Co-operators must not make profit from non-members. The section (24) of the Industrial and Provincial Societies Act accordingly runs:—A registered society shall not be chargeable under schedules C and D of the Income Tax Acts unless it sells to persons not members thereof and the number of shares of the society is limited either by its rules or its practice. These provisions were inserted at the instance of private traders to ensure that a privileged society did not compete with them for the custom of non-members. Where the holding of a share is a condition of membership, it follows that a society must not place restrictions on the number of its shares. The society must be prepared to admit as members all who deal with it so that they may join in the proportionate return of any surplus made by the society. (Hence, the need of rules under sec. 43 (p), (q), and (r)).[2]

The second part of the notification exempting dividends or other payments received by the members on account of profits seems to be a pure act of grace on the part of Government. The movement, however, deals almost entirely with persons of limited means

1. The liability of a co-operative society depends upon whether it is a mutual concern earning non-taxable surplus or whether it is a non-mutual concern earning taxable profits. In English and Scottish Joint Co-operative Society Ltd. V. C. Ag. I. T. (12) the Privy Council held that a co-operative society which sold the tea grown and manufactured by itself to members was a non-mutual concern.

2. In the case of Commissioner of Income Tax v—Salem District Urban Bank Ltd. (1940 I. L. R. 269) it was held that the profit of a co-operative wholesale society "irrespective of the fact whether they were derived from its business with members or non-members were exempt from income tax."

whose income is not likely to be assessable so that the cost to Government must be trifling. In England such profits are liable to assessment. The Government of India did not intend that exemption should be permanent. It was feared that a general exemption of Co-operative Societies from Government dues might lead to the establishment of money-lending business under this guise: it was accordingly confined to societies which submitted to registration and power was taken under section 46 to withdraw this exemption from any registered society.

Sec. 60 (1) of the Indian Income Tax Act (XI of 1922) authorises the Central Government to grant exemptions in respect of income tax in favour of any class of income or in regard to the whole or part of the income of any class of persons. The Indian Finance Act of 1955 has added various statutory provisions regarding co-operative societies. Under sec. 2 (6c) (vii) of the Income Tax Act the profits and gains of any business of insurance carried on by a co-operative society, even if it is a mutual concern, are made taxable as income. Under sec. 9 (4) (b) a member of a co-operative society to whom a building built by the society is allotted or leased under a house building scheme of the society is deemed to be the owner of the building and is assessable as such.

Section 14 (3) grants exemption in respect of certain categories of income of a co-operative society, viz., (1) profits of any business carried on by the society (2) interest and dividend derived from its investments with anyother co-operative society (3) income derived from the letting of godowns or warehouses for storage, processing or facilitating the marketing of commodities (4) interest on securities chargeable under sec. 8 and income from property chargeable under section 9 are exempt from tax, subject to the following exceptions

(1) no exemption is granted in respect of interest on securities chargeable under sec. 8 and income from property chargeable under sec. 9 to—(a) society whose total income exceeds Rs. 20,000 (b) a housing society (c) an urban consumers' society (d) a society carrying on transport business (2) no exemption is granted in respect of any income to the Sanikatta Saltowners' society (3) where a co-operative society carries on insurance business the profits of that business are not entitled to any exemption.

The exemption in respect of business profits applies only in respect of the profits of a co-operative society from a business carried on by it as a co-operative society and not the profits of a business unconnected with the society's objects and not earned in its co-operative character (Hoshiarpur Central Co-operative Bank Ltd. v Commissioner of Income Tax (1953) 24 I.T.R. 346.

Income from property and interest on securities are not exempt from tax (Commissioner of Income Tax v. Madras Central Urban Bank I.L.R-52 Mad. 140). The Bombay High Court, however, have held that the word "investment" in the Finance Department notification related only to such securities as did not form part of the stock in trade of the society and as in this case the securities did form part of the stock in trade, as it was a co-operative bank, the profit made from the sale of securities was not taxable (Surat Peoples' Co-operative Bank v. Commissioner of Income Tax, 1958 (33. I.T.R. 396,). The profits of a Co-operative Society which are exempted from tax are profits which have accrued from the carrying on of one or all of the objects for which the society was formed and registered. The exemption does not extend to profits derived from activities of a co-operative society which are not covered by such objects or within its constitution even though such activities are carried on with the sanction of

Government (Cochin Cottage Industries Co-operative Marketing Society v. Commissioner of Income Tax, Travancore (1956) 30 I.T.R., 356).

The old notification referred to the old Income Tax Act and so could not serve to exempt societies from Super-Tax : the new notification exempts societies from the tax payable under the new Act, thus including Super-Tax in the exemption.

Income-Tax on securities is usually deducted at the source, so that many societies entitled to exemption, actually pay the tax. Certificates of exemption from deduction at the source can be obtained from the Income-Tax officers.

The society is in a strong position, for, as the profits belong to the members, an attempt to levy tax would be defeated by an adjustment of prices (of goods sold) or interest (on loans) which would destroy the profit and leave no taxable surplus and the members would retain all the income they obtain at present[1]...also as 95 per cent of the members (in England) have no taxable income they could recover any tax deducted. Profit is the result of a bargain between buyer and seller, here buyer and seller are the same.[2]

(b) *Stamp-duty*—By notification No. 2781F dated 23rd October, 1919 (Finance Department—Separate Revenue-Stamp), the Governor-General in Council has remitted the stamp-duty with which, under any law for the time being in force, instruments executed by or on behalf of any Co-operative society for the time being registered or deemed to be registered under this Act, or instruments executed by an officer or member of any such society and relating to the business of the society (other than cheques of individual members

1. Tetlow. Co-operative Auditing, p. 8.
2. Ibid., p. 8.

drawn against their current accounts with co-operative banks) are respectively chargeable.

Government of India Finance Department (Central Revenues), notification No. 6—Stamps, dated 25th October 1930. No. 6—In exercise of the powers conferred by clause (a) of section 9 of the Indian Stamp Act, 1899 (II of 1899), and in supersession of the notifications of the Government of India in the Finance Department, No. 940-F., dated 22nd June 1916, No. 80-F., dated 15th January, 1917, No. 1245 F dated 16th May, 1919, No. 3183 F dated 17th December, 1919, No. 4—Stamps, dated 2nd June, 1928 and No. 4—Stamps, dated 10th May, 1930, the Governor-General in Council is pleased to remit the duty chargeable under Article 12 of Schedule I of the said Act on the decisions and awards of the Registrar of Co-operative Societies for the Central Provinces and the awards of arbitrators in all disputes in which Co-operative Societies in British India are parties.

The exemptions do not cover receipts by non-members for interest, etc., paid on deposits in the society or bonds for loans illegally given to non-members. Nor do they apply to a bond given by a member and signed by a non-member as surety. It applies to the one-anna duty on proxies.

Thus as explained by the Registrar, Bihar and Orissa—Cheques or receipts given by a member depositor for withdrawals from his fixed or savings bank deposits are exempt from stamp-duty whether the payment is received by himself in cash or by transfer to his own account in the same bank or in any other bank, or to the account of another depositor or co-operative society or endorsed in favour of a non-member. The above exemption does not extend to a non-member depositor except to this extent that when the payment is received by a non-member by transfer to his own

account in the same bank, no receipt stamp will be necessary.

When a co-operative society issues an unembossed cheque in favour of a member or a non-member no stamp need be affixed on the cheque for endorsement, negotiation or encashment. The payee will also not be required to pay any stamp-duty.

When an individual member is granted a loan by a Co-operative Society exceeding Rs. 20, the bond or the receipt relating to it need not be stamped.

Similar exemptions are granted in other countries.

In England the exemption is confined to Co-operative Societies, such as those of agricultural credit, which have a rule prohibiting any division of profits amongst their members.

(c) *Registration*—The Government of India and Local Governments have sanctioned remission of all fees payable by or on behalf of any registered Co-operative Societies and all fees payable in respect of any instrument executed by any officer or member of such a society and relating to the business thereof. The Committee on Co-operation have recommended that where these fees would otherwise form part of the remuneration of the registering officers these latter should receive compensation for this loss of income.

In addition to the privileges above mentioned, Government has in sections 18 and 48 bestowed upon registered societies the benefits of incorporation and exempted them from the many fees levied on corporations under the Indian Companies Act. This is a very substantial privilege and taken in conjunction with the others, it has the effect of laying upon societies the responsibility of adhering strictly to principles. The whole idea of the movement is service for the mutual benefit without profit and it is because profit-making is not an object of societies that Government can remit

various dues without unduly favouring them against companies and private traders. It becomes very important then that societies should not compete with these latter for the custom of non-members. They have a right to insist that transactions with non-members should be prohibited (cf. secs 29, 30 and 31). As the movement spreads to other business than credit, the need for restraint will increase. Co-operation stands for fair play all round and for a specially privileged society to compete with a private trader, paying all legal taxes, for the profits derived from custom of non-members would not be fair play at all. Privileges involve duties.[1]

As Mr. Brabrook points out, these privileges are actual endowments by the State. They afford added reasons for State control over the disposal of profit and dividend.

In some countries further concessions are granted. In some parts of Italy agricultural banks are entitled to gratuitous legal assistance (Monographs, II, p 131). In Greece Co-operative Societies enjoy free postal and telegraph facilities for their correspondence with the public authorities. In Finland and Austria all cereals for the army used to be purchased from Co-operative Societies. In Hungary the department of agriculture gives to co-operative wheat storehouses aid to the extent of five-sixths of the expenses of building and initial establishment (Monograph, II p. 83). In Connecticut, U. S. A., mortgages on real estate are free from both state and local taxes, "an arrangement which inures to the general advantage of borrowers". (American Evidence, p. 15).

1. In most countries the law recognises that exemption from taxation and similar privileges, given on the ground that a co-operative body is a non-profit-making institution, can only be allowed in so far as no business is done with non-members and the share list is always open (Co-operation for Farmers. Smith Gordon, p. 76).

In Japan, Co-operative Societies enjoy the privilege of exemption from the tax on business transactions, and from the income-tax, as well as from the registration-tax. Government also gives facilities to societies which are willing to undertake contracts, the army contracts for the supply of grain, etc.[1]

Roumania exempts from postage correspondence between Co-operative Societies. It gives them favoured treatment in respect of undertakings for working the State forests or fishing in State-owned waters. Similarly they receive preference in all concessions, etc.

In some provinces of India societies are allowed a refund by their Local Government of three-fourths of the money-order commission (one per cent) charged by the post office on remittances between them and their financing agency: the Madras Committee recommended this for Madras and the Royal Commission on Agriculture recommended its extension generally.

Property and funds of registered societies.

Restrictions on loans.

29. (1) A registered society shall not make a loan to any person other than a member:

2. The Reserve Bank of India has permitted state co-operative banks to remit an amount of Rs. 5,000 or a multiple thereof from any place where there is an agency of the Reserve Bank to any account which the state co-operative bank maintains with the Reserve Bank free of charge three times a week. Weekly remittances from the central co-operative banks are allowed to be made either to the account of the state co-operative banks with the Reserve Bank or to that maintained by the head office of the state co-operative bank at an agency. State co-operative banks and their affiliated central banks have been allowed facilities for reverse transfer of funds under which free remittances can be made twice a week in multiples of Rs. 5,000 without restriction as to maximum.

In certain countries in Latin America and the Middle East the fiscal advantages granted to co-operative societies are fairly numerous and may even include total or partial exemption from certain customs duties; in some cases (Bolivia, Chile, Colombia and Costa Rica) they relate to transport tariffs.

Provided that with the general or special sanction of the Registrar, a registered society may make loans to another registered society.

The Bombay Act apparently gives the Registrar authority to sanction a loan to any person other than a member.

(2) Save with the sanction of the Registrar, a society with unlimited liability shall not lend money on the security of moveable property.

Madras adds :—"other than agricultural produce".

(3) The Local Government may, by general or special order, prohibit or restrict the lending of money on mortgage of immoveable property by any registered society or class of registered societies.

The Burma Act omits clause (2). In that country there are a number of Chinese pawnbrokers who do a good business on the security of moveable property. Madras has a clause : 'a registered society may make a loan to a depositor on the security of his deposit.'[1]

On the general subject of loans, see notes to section 43 (o).

The word "loan" here includes loans in kind (e.g. grain) as well as in cash. In Italy the law enacts that loans shall always be paid over in cash.

---

1. Bombay Act of 1925 had a provision that "save with the sanction of the Registrar, a society with unlimited liability shall not lend money on the security of moveable property". This sub-section was deleted in 1948. Bengal not only prohibits loan to non-members but loan to members in excess of the maximum or normal credit fixed for them is not allowed.

Even in regard to such an elemental principle as this it would appear that the practice varies. Talking of French Credit Societies Herrick (Rural Credits, p. 340) says "the law does not restrict the local societies to lending to members only; they may lend to any farmer who needs money for an agricultural purpose, but only the paper of a member may be discounted at the Regional Bank". The Italian Peoples' Banks "even extend credit to non-members who are in need and worthy of their help." The larger banks all have special funds for the benevolence (Ibid., p. 352). The Austrian Credit Societies lend to members only (Ibid., p. 376). In Roumania about one-third of the loans are granted to non-members (p. 405). Mr. Wolff says "As a general rule lending must be confined to members...It would not, however, do to press such limitation unduly in view of this not unlikely occurrence. The bank may have more money on hand than it knows how to employ in loans to members. Under such circumstances it ought to be permissible to place some of the surplus money, in an exceptional way, in the shape of loans even to non-member institutions or capitalists of undoubted solvency. The ordinary current loan business should be confined to members only".[1]

In India it is the general practice to limit loans to members or to other societies.

Member—See definition, section 2(c) and section 5 and notes thereunder. Note also that the object of the society must be the promotion of the interests of the members only. A loan issued by the Committee to non-members may be recovered from them as they are personally responsible for all loss sustained by their illegal acts.

1. Co-operative Credit for the U. S., p. 47.

Loans having as their sole objects the investment of funds are not affected by this prohibition, it does not, for instance, serve to prevent a society making a deposit in any mode permitted by section 32. While the sanction of the Registrar is required for a loan to another registered society, it is not required to a deposit in such society (cf. sec. 32 (1) c).

In Germany the consent of the Board of Supervision is necessary for any loan granted to a member of the Committee and generally such loans are prohibited in the by-laws. As already pointed out in the notes to section 4, the unlimited liability of members is protected by this prohibition.

'Immoveable property'—shall include land, benefits, to arise out of land, and things attached to the earth, or permanently fastened to anything attached to the earth (General Clauses Act, sec. 3. 3. cl. 25).

"Moveable property"—shall mean property of every description except immoveable property (Ibid., cl. 34).

Clause (2) is the result of much controversy. The question as to whether a society's operations should include pawn-broking was carefully discussed between 1900 and 1904. The original bill provided that a rural society should not lend money on the security of moveable property except on agricultural produce, being the property of the member to whom the loan was made. The Government of India Resolution of 29th April, 1904 stated the case as follows :—

No provisions of the original bill were more severely criticised by some, or more stoutly supported by others, than those which related to loans upon the security of jewellery and upon the mortgage of land. It had been proposed to prohibit rural societies from advancing money against jewels, on the ground that the basis upon which these societies should work was not material

security, but the credit which arose from the individual character and substance of their members. It was pointed out in reply that, while personal credit was undoubtedly the basis of their transactions, such things as jewels might properly be received as collateral security, that the custom of the country is to regard jewellery as available for this purpose and that if a member is debarred from utilising his material credit to the full in borrowing from his society, there will be a danger of his using it to borrow from the money-lender. After full consideration of the question it was decided that while there are practical difficulties in connection with the custody and valuation of jewellery which might be formidable in the case of some village societies, it would be well to make distinctions. When a rural society is located in a town or large village with silver-smiths available, with a ready market at hand, and with members and officers of intelligence, it may safely be trusted to conduct transactions which might be dangerous in the case of a more strictly rustic association. Power has, therefore, been given to the Registrar to allow any society, which he thinks can safely be trusted, to advance money upon jewellery; and he will be able to feel his way in the matter.[1]

There is one form of moveable property which should never be accepted as security and that is the member's

1. 'Credit societies have been tempted to assist members to acquire small holdings on real-estate mortgages and have invested their surpluses in such securities. Serious consequences have resulted from this practice....bitter experience is gradually teaching co-operators to let real estate mortgage alone' (Herrick, p. 468).

Wolff (Co-operation in India, p. 166) objects that in hardly any case pledge-credit educate.

own shares.[1] The society already holds a general lien on them (sec. 20), so it is absurd to add a special one. Share capital is really the security for the depositors and not for share-holders. A man who owes his society the full value of his shares is a shareholder only in name, and if the society be wound up, so much of the loan may be dead loss. To accept its own shares as security is to accept its own capital (cf. Committee's Report, para 67).

One form of moveable property on which societies should always be ready to lend is, of course, harvested crops. In the earlier discussions the difference between jewellery and harvested crops as suitable security seems to have escaped attention. In Madras, Loan and Sale Societies are formed with the primary object of advancing money on such security which is stored in godowns owned or rented by the society and the new Act legalises such loans. The Punjab Commission shops and similar sale societies elsewhere advance on produce in their custody. Joint-stock banks are generally willing to assist societies which advance on stored produce.[2]

---

1. The Bombay rules expressly forbid this : 'The shares of the society may not be hypothecated to that society by its members as security for a loan'.

In Mysore shares are accepted as security for loans, but the Co-operative Committee (1923) advised that this be stopped.

2. Under the Second Five Year Plan the primary agricultural credit societies will be linked to the primary marketing societies so that the cultivator will be provided with credit, for seeds, manures, agricultural implements and essential consumer goods and will be helped in the disposal of his produce. Loans will be advanced by credit societies on the basis of production programmes and anticipated crops and a maximum credit limit will be fixed for each member. Sale of produce will be done through the primary marketing society.

In post-war Europe the tendency is to have general purpose societies. In West Germany the village banks not only advance loans but also arrange for the supply of agricultural requirements and for the sale of produce. In Yugoslavia credit is provided by the State banks hence all agricultural societies function as general purpose societies.

Madras lends a lot of money on pledge of moveables.[1]

Clause 3 has reference to the distinction between short term credit societies and long term, mortgage or land banks. The Government of India Resolution stated the case as follows:—

The question of mortgage was still more difficult. Almost all the considerations upon either side which have been referred to in the preceding paragraph apply here also, with the addition of others of still greater importance. On the one hand, one of the methods in which an involved cultivator can most effectively be assisted is by enabling him to substitute a mortgage upon reasonable for one upon exorbitant terms: and a member who is refused the credit to which his property in land fairly entitles him, merely because he is not allowed to hypothecate it to the society, may be driven to the money-lender for a loan which, had it not been for the prohibition, he might have taken from the society with advantage to both parties. On the other hand, it is exceedingly inadvisable that these societies should be allowed to lock up their limited capital in a form in which it is not readily available: their most useful form of business will probably be small loans for short periods with prompt recoveries: and it is above all things desirable that they should keep out of the law courts. The final conclusion was that loans upon mortgage should be allowed in the first instance, but that the Local Government should have power to prohibit or restrict them, either generally or in any particular case if it is found that interference is necessary. The matter is one which should be very carefully watched.

1. In Madras the non-agricultural societies and bigger village societies whose management is sound and which have facilities for the safe custody of moveables have been permitted to lend on the security of moveables e.g., merchandise, gold and silver articles, life insurance policies, Government Securities etc.

In India mortgages on land are restricted in some provinces and, hence special legislation would be required were such loans to become common. Mr. Wolff writes that mortgage credit is, for banks of the order here spoken of, by common consent placed on the taboo ......The reasons why mortgage credit is not suitable for co-operative credit institutions of the type here spoken of are, that it locks up money for a long, it may be an indefinite, time ; and that the security given, if it should have to be seized, would be likely to prove a veritable white elephant. The co-operative credit bank relies for its funds upon withdrawable deposits and bankers' advances. These things will not bear the strain of mortgage loans......You must have long term funds, debentures or land bonds, running for just so long as the loan runs.

The principles of co-operation do not conflict with long term mortgage loans provided the money is devoted to productive purposes but it is better to work on personal in preference to material security. The Committee on Co-operation (para 66) held that there is nothing un-co-operative in the hypothecation of immoveable property so long as it is recognised that personal security must be given and that the borrower's property is only a secondary or collateral protection. This must be taken in addition to the instruments executed by the borrower and his surety, and not in place of them : and the society should proceed in case of default against the sureties before taking action against the property. The chief objections are that there is difficulty in realising on such security and there is a tendency for loans so secu-

red to be long, so that the capital of the bank so invested becomes dead.[1]

The Madras Committee (1928) found that of the total outstanding loans (then 432 lakhs) 49. 3 per cent had been advanced on immoveable property. In Bihar and Orissa, mortgages are generally taken by societies as collateral security for loans over Rs. 200 with the principal object of preventing a borrower from mortgaging his property to a money-lender ; but in realising debts, the societies have so far failed to make use of these mortgages on account of the difficulties involved. Following Bengal, it is now proposed to issue mortgage awards. The arbitrator will issue a preliminary award directing that the sum found due be paid within three months, and that, failing such payment the property mortgaged shall be sold and the sale proceeds applied to the satisfaction of the dues of the society. If the defaulter fails to pay by the date fixed, the society has to file a petition praying for a final mortgage decree being passed. This final decree can be filed in the Civil Court for execution. The Indian Central Banking Enquiry Committee found that many Provincial Committees were of opinion that mortgage loans for long periods are unsuitable business for the rural credit

---

1. "The effects of land reform on co-operative institutions may be viewed from two ends, namely in relation to past debts given on the security of land, payments due to co-operative financing institutions should be given a prior claim against compensation to which individual owners of land may be entitled. The liability for repaying loans should pass to individuals to whom rights in land are transferred."

As regards future transactions co-operative societies will lend only with reference to areas held under personal cultivation. To facilitate the grant of medium and long term loans to tenants holding directly under the Government rights of transfer in favour of co-operative financing institutions will be allowed. In respect of land which comes into the possession of co-operative financing institutions restrictions relating to ceilings on agricultural holdings will not be applicable (Second Five Year Plan, pp. 233-234).

societies. The reasons are: (1) the overshadowing of personal credit by mortgage may entail a neglect of co-operative principles, (2) the deposits of Co-operative Societies are for short periods and it is unsound finance to utilise them for long term loans, (3) the enquiry and the valuation preliminary to the grant of long term loans have to be entrusted to a trained agency controlled by and responsible to some central organisation, (4) the maintenance of valuable documents and title deeds cannot be entrusted to ordinary village societies, and (5) when defaults occur in the repayment of mortgage loans, the assets of the society become frozen and the obtaining and execution of mortgage decrees for the recovery of overdue loans becomes an extremely difficult operation.

The above remarks refer to mortgage security in ordinary village societies. General banking practice regards as dangerous any long term loans not covered by long term deposits. The Committee felt that the establishment of well-conceived and well-administered mortgage associations or banks at the instance of the landed gentry of the country with the help of Government would be a measure of great value not only to the proprietors themselves, but also to the Government.

They might have added that the existence of well-managed long term mortgage banks would help the small village society to confine its activities to short term loans.

Such co-operative land mortgage banks[1] have been organised but it remains to be seen what their effect will be. Mortgages are seldom made for productive purposes. The majority appear to have their origin in unsecured debt. The chief object of the new institutions

---

1. The subject is very ably discussed in Mr. Strickland's book "Studies in European Co-operation". Vol. II. Ch. I (1925).

red to be long, so that the capital of the bank so invested becomes dead.[1]

The Madras Committee (1928) found that of the total outstanding loans (then 432 lakhs) 49.3 per cent had been advanced on immoveable property. In Bihar and Orissa, mortgages are generally taken by societies as collateral security for loans over Rs. 200 with the principal object of preventing a borrower from mortgaging his property to a money-lender; but in realising debts, the societies have so far failed to make use of these mortgages on account of the difficulties involved. Following Bengal, it is now proposed to issue mortgage awards. The arbitrator will issue a preliminary award directing that the sum found due be paid within three months, and that, failing such payment the property mortgaged shall be sold and the sale proceeds applied to the satisfaction of the dues of the society. If the defaulter fails to pay by the date fixed, the society has to file a petition praying for a final mortgage decree being passed. This final decree can be filed in the Civil Court for execution. The Indian Central Banking Enquiry Committee found that many Provincial Committees were of opinion that mortgage loans for long periods are unsuitable business for the rural credit

1. "The effects of land reform on co-operative institutions may be viewed from two ends, namely in relation to past debts given on the security of land, payments due to co-operative financing institutions should be given a prior claim against compensation to which individual owners of land may be entitled. The liability for repaying loans should pass to individuals to whom rights in land are transferred."

As regards future transactions co-operative societies will lend only with reference to areas held under personal cultivation. To facilitate the grant of medium and long term loans to tenants holding directly under the Government rights of transfer in favour of co-operative financing institutions will be allowed. In respect of land which comes into the possession of co-operative financing institutions restrictions relating to ceilings on agricultural holdings will not be applicable (Second Five Year Plan, pp. 233-234).

societies. The reasons are: (1) the overshadowing of personal credit by mortgage may entail a neglect of co-operative principles, (2) the deposits of Co-operative Societies are for short periods and it is unsound finance to utilise them for long term loans, (3) the enquiry and the valuation preliminary to the grant of long term loans have to be entrusted to a trained agency controlled by and responsible to some central organisation, (4) the maintenance of valuable documents and title deeds cannot be entrusted to ordinary village societies, and (5) when defaults occur in the repayment of mortgage loans, the assets of the society become frozen and the obtaining and execution of mortgage decrees for the recovery of overdue loans becomes an extremely difficult operation.

The above remarks refer to mortgage security in ordinary village societies. General banking practice regards as dangerous any long term loans not covered by long term deposits. The Committee felt that the establishment of well-conceived and well-administered mortgage associations or banks at the instance of the landed gentry of the country with the help of Government would be a measure of great value not only to the proprietors themselves, but also to the Government.

They might have added that the existence of well-managed long term mortgage banks would help the small village society to confine its activities to short term loans.

Such co-operative land mortgage banks[1] have been organised but it remains to be seen what their effect will be. Mortgages are seldom made for productive purposes. The majority appear to have their origin in unsecured debt. The chief object of the new institutions

1. The subject is very ably discussed in Mr. Strickland's book "Studies in European Co-operation". Vol. II, Ch. I (1925).

is to advance money for redemption of existing mortgages.[1]

Restrictions on borrowing

30. A registered society shall receive deposits and loans from persons who are not members only to such extent and under such conditions as may be prescribed by the rules or by-laws.

Burma adds—and shall in respect of such deposits and loans make such provision for the maintenance of fluid resources as the Registrar may, by general or special order in this behalf prescribe.

Under the former Act, section 9 ran: A society may receive deposits from members without restriction, but it may borrow from persons who are not members only to such extent and under such conditions as may be provided by its by-laws or by rules made under this Act. The Madras Act applies this provision to everyone, members or non-members.

Mr. Wolff described this restriction as unwise as what is wanted at the outset is other people's money; the credit sought is from outside. The present section is not open to Mr. Wolff's objections. The restriction is necessary in the interest of thrift, for, as already remarked the savings of members must be accepted in preference to deposits from non-members. This section

---

1. In 1955-56 there were 9 Central Land Mortgage Banks with Rs. 78. 73 lakhs as share capital. These Banks advanced loans amounting to Rs. 2.83 crores. There were 302 primary Land Mortgage Banks with a share capital of Rs. 85.5 lakhs and the total amount of loans advanced by them was Rs. 1.74 crores.

Sections 95 to 122 of the Bengal Act provide for the organisation and management of Land Mortgage Banks. These provisions include the right of the Bank to pay prior debts of the mortgagor, priority of mortgage over claims arising under Act XIX of 1883, power to distrain, power to put mortgaged property to sale without the intervention of the court etc.

also enables the members to fix a limit in their by-laws to their unlimited liability.[1]

This section (except in Madras) only refers to non-members. Deposits and loans from these cannot be received unless this is specially provided for by rule or in the by-laws (cf. sec. 43 (2) (e)). The Indian Central Banking Enquiry Committee rightly pointed out that without the aid of an efficient and well-organised central banking system which can act as a true balancing centre for primary societies, the latter cannot receive and utilise non-members' deposits without risk and with profit. The Foreign Experts held that the primary society should aim at becoming the savings and loan bank for the village and suggested that members should on principle receive a somewhat higher rate of interest on deposits than non-members.

Of course, the most important non-member from which a society can obtain a loan in some countries is the Government, and Madras has a special section 31: The Local Government may, subject to such rules as may be prescribed in this behalf, grant loans to, take shares in, or give financial assistance in any other form to a registered society.[2] In British Columbia, an agricultural association can borrow from Government up to 80 per cent of its subscribed capital. The amount of stock paid up must be at least 50 per cent of the subscribed capital. The loans are repaid within 20 years at 4 per cent and with a sinking fund.

1. In 1951-52 in primary agricultural credit societies 60 per cent of the deposits was from members but in the case of central banks 70 per cent of the deposits was derived from non-members. The Rural Credit Survey Committee have recommended that central banks should pay a higher rate of interest on society's deposits.

2. Section 38 of the Bengal Act and Sec. 33A of the Bombay Act have similar provision.

In Quebec, an agricultural association may not borrow more than four times the aggregate amount of the subscribed shares and reserve fund.

This section applies to Central Banks whose gross liabilities should not ordinarily exceed ten or at the most twelve times their capital plus reserve fund. It is in practice more important to fix a low maximum on dividends. This removes the temptation to seek high profits and ensures a more rapid growth of the reserve. A deposit ordinarily is money lodged in a bank for safety or convenience; here it consists of money offered to a society at its fixed rates; while a loan is secured by a society on the lender's terms when it cannot get enough deposits. The section seems to have direct reference to the English law on the subject. Prior to 1898, a Friendly Society could not receive a deposit from non-members. Sir Horace Plunkett, in order to facilitate the establishment of Co-operative Societies in Ireland, secured an amendment conferring upon them the power to borrow and to receive deposits from any person, whether members or not. This power is expressly limited to societies which by rule provide that no part of the funds shall be divided by way of profits, bonus, dividend or otherwise among the members and that all money lent to members shall be applied to such purpose as the society or its committee of management may approve (The Societies Borrowing Powers Act, 1898). The condition that certain societies should not be allowed to distribute profit or dividend so long as they are dependent on deposits from non-members is one that might be imposed in India.

In Hungary the Central Credit Society has a decisive voice in permitting or prohibiting a Co-operative Society borrowing from a third party. Its own loans to primary societies do not usually exceed three times the amount of their share-capital (Monograph). The control of a

central financing institution will probably prove more acceptable than the best-intentioned rule of a Local Government.

Restrictions on other transactions with non-members

31. Save as provided in sections 29 and 30, the transactions of a registered society with persons other than members shall be subject to such prohibitions and restrictions, if any, as the Local Government may, by rules prescribe.

See section 43 (1).

The transactions of credit societies are dealt with by section 29 (1) So that this section refers to transactions other than credit. The general rule is that there should be no transactions with non-members except for the benefit of members[1]. A credit society may borrow from non-members but may not lend to them, a stores society may purchase from but may not sell to them, while a sale society may sell to but may not purchase from them. The Co-operative idea, as Sir F. Nicholson points out, connotes membership and no departure from it should be allowed. Societies are associations for self-help and they have no duties to help others and the law does not empower any one to impose such obligations upon them. Transactions with non-members may be prohibited or restricted: they cannot be ordered to be undertaken. The Committee on Co-operation did not think it possible to lay down any general rule but considered that as far as

1. Cf. Herrick, p. 248. "A Co-operative Society must of necessity in some circumstances deal with outsiders, but its benefits and advantages are all confined to members...The Co-operative Society excludes the public whenever it is possible to do so, and conducts its operations as on a common account for the mutual benefit of members alone". Also p. 449. Writing of Quebec, 'all the benefits of the association must be confined to members'.

as possible such dealing with non-members should be avoided. They would not press this rule in cases where the operations of a society, if confined to its own members, would be so restricted that it could not be managed with any prospect of profit or economy[1].

For instance, agricultural implements may be sold at wholesale rates only in lots of 25, where as the members of a society may only require 20 or 22, in such a case the society would be justified in disposing of the balance to non-members. Mr. Wolff referring to supply societies writes that observance of the wholesome canon that no business is to be entered into with non-members is likely soon to serve as a magnet to attract more members......There has been no more effective recruiting officer for German Agricultural Co-operation than the legal prohibition of dealing with non-members.

On the other hand it would seem that in England and Italy, transactions with non-members are a useful means of attracting them to become members. If a man deals with a co-operative store and receives no dividend or a less dividend than is paid to members, he inclines to become a member. The merits and demerits of transactions with non-members form a theme for endless discussion. The possession of valuable privileges renders societies

1. The corresponding provision in the Bombay Act is—Consumers, Producers and Housing societies may to the extent provided by their by-laws trade with persons who are not members, but the transactions of a resource society with persons other than members except as provided under section 34 or 35 small be subject to such prohibitions and restrictions, if any, as Government may by rule prescribe."

open to restrictions imposed at the instance of private traders or by Government.[1]

In the former German Act, Distributive Societies may only sell goods, in the ordinary course of business, to members or their representatives. But in 1896, the Act was amended to remove this limitation for Agricultural Distributive Societies which, without keeping an open shop, deal in goods which from their nature are exclusively for use in agricultural operations, But Mr. Cahill says : (p. 170), that dealings are not encouraged by the societies, as new members are not likely to be attracted, if the advantages of membership, without its duties, are thus obtainable. When societies have a surplus of stock, having obtained more than their members ordered or bought, they often dispose of it to non-members. Similarly the Italians permit sale of agricultural implements, etc,, to non-members. In the Irish Dairy Societies, a farmer must join within three months of his commencing to supply milk, or the Committee may exclude him from dealing with the dairy.

The Argentine Government proposed to limit the advantages of the Co-operative Societies Act to co-operative distributive societies in which the sale is limited

---

1. In Italy the Catholic consumers' societies usually confine their sales to members but the other societies sell to non-members also. "The Milan Wholesale Stores sells to members and non-members and distributes purchase dividends to both without any discrimination". In U. S. S. R. consumers' co-operatives sell goods both to shareholders and non-shareholders. Various inducements are offered to people to join the societies. In addition to the dividend shareholders have a prior claim to the services of co-operative workshops, preferential enrolment treatment at co-operative schools, and accommodation free or at concessional rates at co-operative holiday homes. Shareholders enjoy priority in the purchase of goods over non-members.

to members only. In Hungary the co-operative distributive societies sell to non-members also, and this has occasioned much protestation from the shopkeepers (although the societies are not exempted from taxes and duties) (Monograph). The House of Lords Committee on the Thrift and Credits Bill in recommending that credit banks should be empowered to carry on, jointly with their banking business, a co-operative trading business, added "the trading of such bank should be confined to its own members." In Italy, societies for manufacturing manures sell freely to non-members.

This prohibition against transactions with non-members is based upon two considerations. First Co-operative Societies are associations for mutual help amongst members. They render the best possible service at the lowest possible rate and make no commercial profit. Any surplus is to be returned to the members either as a bonus upon their transactions or as an addition to the society's reserve fund. If a society regularly deals wilh non-members, it makes a commercial profit out of them and opens a door to greed for dividends. It lays itself open to assessment to Income-Tax and to loss of its privileges (cf. notes to sec. 28). Secondly, co-operation stands for fair play all round. It is open to any body of men to associate together to improve their economic position by legitimate means, but if they compete with private traders they lose their right to special privileges. The private traders have a right to insist that Co-operative Societies must not compete with them for the custom of non-members.

In order to ensure that no hardship upon non-members is inflicted by this prohibition, it is incumbent upon

co-operative societies to be open to all qualified for membership (cf) notes to sections 6, 28 and 43 (q)).[1]

The right or interest of a non-member to deal with a Co-operative Society does not exist: but where such dealings are permitted a problem arises as to whether non-members should share in the patronage dividend. In the U.S.A. twelve co-operative laws state that non-members shall or may receive patronage dividends, and several of these specify that the rate to non-members shall be one-half the rate paid to members.

On no account whatsoever should credit be given to a non-member. English co-operative societies bar credit and the rule of compulsory arbitration does not apply to debts owed by non-members.

Where Sale Societies or Commission Shops deal in the produce of non-members, there is no objection to an advance payment on the security of the goods deposited for sale.

32. (1) A registered society may invest or deposit its funds :— Investment of Funds.

(a) in the Government Savings Bank, or

(b) in any of the securities specified in section 20 of the Indian Trusts Act, 1882, or

1. During World War II and also after it there was a rapid expansion of consumers' stores in India. When controls were enforced Government utilised these societies for the equitable distribution of foodstuffs and other controlled articles, both in urban and rural areas. It was, therefore, not possible for these societies to confine their business to members only.

The Co-operative Planning Committee have recommended that as the needs of the villager are so few and so simple it will not be worthwhile to start a separate co-operative stores for each village. Efficient primary agricultural societies be permitted to undertake this activity also and there should be no prohibition against sale to non-members.

(c) in the shares or on the security of any other registered society, or

(d) with any bank or person carrying on the business of banking, approved for this purpose by the Registrar, or

(e) in any other mode permitted by the rules.

(2) Any investments or deposits made before the commencement of this Act which would have been valid if this Act had been in force are hereby ratified and confirmed.

This section is permissive.

Invest—convert into some other form of wealth usually of a more or less permanent nature (Century Dictionary).

Funds—The stock or accumulation of money or other form of wealth available for the purpose.

The section refers to funds not immediately required in the business of the society and not merely to the reserve fund (see notes to sec. 29 (1) and the distribution between a loan and a deposit). The section is permissive, so a primary society is not debarred from using its reserve fund in its own business.

The society has a right to invest its funds in any of the securities referred to in clauses (a) to (d). Clause (e) expressly excludes the previous clauses, so that the rules cannot take away this right or limit the society's choice.

(*a*) *Government Savings Bank*—Co-operative Societies' accounts are considered as public accounts. The following concessions have been granted :—

(1) Societies may withdraw sums up to Rs. 3000 from their accounts on three days' notice and up to Rs. 10,000 on ten days' notice at all Post Offices situated at District Headquarters or at taluka headquarters, where there is also a telegraph office.

(2) Societies may withdraw sums up to Rs. 3,000 on ten days' notice from all other Post Offices.

(b) *Section 20 of the Indian Trusts Act, 1882*, allows investments in the following :—

(a) in promissory notes, debentures, stock or other securities of the Government of India, or of the United Kingdom of Great Britain and Ireland,

(b) in bonds, debentures and annuities charged by the Imperial Parliament on the revenues of India ;

(c) in stock or debentures of, or shares in, Railway or other Companies, the interest whereon shall have been guaranteed by the Secretary of State for India in Council ; or in debentures of the Bombay Central Co-operative Bank, Limited, the interest whereon shall have been guaranteed by the Secretary of State for India in Council[1].

(d) in debentures or other securities for money issued under the authority of any Act of a Legislature established in British India, by or on behalf of any municipal body, port trust or city improvement trust in any Presidency town, or in Rangoon town, or by or on behalf of the trustees of the port of Karachi,

(e) on a first mortgage of immoveable property situate in British India: Provided that the pro-

---

1. Added by Act XXI of 1917.

perty is not a leasehold for a term of years and that the value of the property exceeds by one-third or, if consisting of buildings, exceeds by one-half, the mortgage-money or

(f) on any other security expressly authorised by the instrument of trust, or by any rule which the High Court may from time to time prescribe in this behalf.

(c) *In..............any other registered society*—The Committee on Co-operation object to primary societies depositing their reserve funds in Central Banks but advocate the deposit of their surplus funds in them.

The Industrial and Provident Societies Act (Sec. 38) expressly adds: provided that no such investment be made in the shares of any society or company other than one with limited liability. This should be the rule in India (cf. section 4, proviso 2) and this proviso has been added to this clause in the Bombay and Madras Acts. Some laws rightly impose a limit on the amount that may be so invested, and name the majority in a general meeting required to authorise such an investment.

(d) The House of Lords Committee on the Thrift and Credit Bill recommended that thrift and credit banks should be empowered to deposit their surplus in a local joint-stock bank if they so desire.

Apparently a member-treasurer need not be approved for ordinary deposits.

(e) *In any other mode*—e. g. in the erection of offices and purchase of land therefor, but not in the shares of any Company to which any reserve liability attaches. It must not be deposited on personal security as this would approach an evasion of section 29 (1).

The Punjab has a rule: a registered Co-operative Society may invest or deposit its funds in any bonds or loan issued by the Punjab Government and secured upon its revenues.

The Act does not prescribe the authority which may sanction the investments. Rules may be framed under section 43 (p).[1]

For convenience of reference it may be mentioned that societies are permitted to keep their funds in a strong box in the Government Treasury.

33. No part of the funds of a registered society shall be divided by way of bonus or dividend or otherwise among its members. Funds not to be divided by way of profit.

Provided that after at least one-fourth of the net profits in any year have been carried to a reserve fund, payments from the remainder of such profits and from any profits of past years available for distribution may be made among the members to such extent and under such conditions as may be prescribed by the rules or by-laws:

Provided also that in the case of society with unlimited liability, no distribution of profits shall be made without the general or special order of the Local Government in this behalf.

---

1. The Co-operative Planning Committee have recommended that urban banks "with a paid up capital and reserve of Rs. 50,000/- and over and with ten years' standing may invest up to 40% of their surplus funds in such manner as their boards may unanimously determine". In their note of dissent Messrs S. Hassan and M. R. Bhide have condemned this recommendation as reactionary. Their reasons are, (1) management of urban banks is largely in the hands of persons connected with joint stock banks and there is a serious danger that funds of societies may be used in joint stock concerns whose liability is doubtful. (2) the amount of money that is now available from co-operative societies for meeting the demand for agricultural finance is limited, hence every rupee that is available from Co-operative Societies in urban areas should be made available for agricultural finance.

The Bombay Act is given in the Appendix. It restricts dividends to ten per cent. But the prohibition of a bonus is omitted and societies there have been found distributing a bonus in addition to the dividend. In the United Provinces, societies for production and distribution are now allowed by rule to give to members a dividend on their share-capital as well as a bonus on their non-credit dealings subject to the limitation that the whole account so distributed in dividend and bonus shall not exceed 50 per cent. of the net profit on the year's working.

This is hardly co-operative and must tend to encourage the shareholder who does not deal with the society. Bombay which omits this reference to a bonus supplies the deficiency by a rule forbidding any bonus in addition to dividend.

Madras specifically allows payment to a member for work done by him as secretary or as clerk on such scale as may be prescribed by the by-laws, and also allows a bonus to him. It omits the proviso as to societies

with unlimited liability and leaves this to the rules and by-laws.[1]

In a Co-operative Credit Society on the Raiffeisen model all profits go to an indivisible reserve; this reserve on liquidation is not divided amongst the members but is devoted to some object of public utility or it may be kept in deposit until a new society is started in the same area.

In stores societies on the Rochdale plan, the profits (after allowing for reserve) are distributed amongst the members as a dividend on the amount of transactions. This is distribution on a patronage basis. The main principle is clear and such confusion as there is, arises from the use of the words "profits" and "dividend".

---

1. Sec. 57(2) of the Bengal Act provides that no dividend or bonus shall be paid otherwise than out of the profits certified by the audit officer to have been actually realised. After at least 25 percent of the net profits is carried to the reserve fund, the balance together with undistributed profits of past years may be distributed as dividend among members or paid as bonus or remuneration to a member or employee.

Sec 18(1) of the Bihar Act provides that at least 35 per cent of the net profits should be carried to the Reserve Fund. The bylaws of reorganised Central Co-operative Banks in Bihar provide that the annual net profits shall be disposed of as follows:—

(i) 35 per cent to the Reserve Fund (ii) 10 per cent to the Stabilisation Fund (iii) Out of the remainder a dividend may be paid not exceeding 6¼ per annum on the amount of shares held by members (iv) not less than 50 per cent of the remainder shall be carried to a bad debt reserve. (v) any balance may be allotted to any or all of the following with the approval of the Registrar:—

(a) Investment depreciation fund (b) building fund, (c) dividend equalisation fund (d) bonus to staff not exceeding one month's salary (e) common good fund (vi) Undisbursed balance, if any, shall be added to the Reserve Fund. Orissa Act of 1951 provides that (a) not less than 50 percent of the net profits of a society with unlimited liability and 25 percent of net profits of a society with limited liability shall be carried to the Reserve Fund, (b) an amount not exceeding 15 percent may be contributed to any charitable purpose or to any Co-operative or public purpose. Provision has also been made for payment of "a dividend or bonus among members or paid as bonus or remuneration to a member of the society for any specific service rendered to the society or contribution to Provident Funds for members or employees" (See 44, 45 & 46)

Co-operation aims at rendering services to the member at the actual cost of those services. Ordinary business caution requires that some provision should be made for unforeseen contingencies and accordingly members are usually called upon to pay more than is necessary. The resulting surplus belongs to the members in the proportion in which they have contributed to it. In stores (distributive societies) this surplus is accordingly returned as a rebate on purchases. In sale societies, it is refunded on goods sent for sale. In actual practice it has, in England, been found expedient to sell at market-rates and to return the benefit arising from co-operative purchase in the form of a bonus or rebate, commonly referred to as dividend. This aggregate rebate cannot accurately be called profits, as it would be absurd to suggest that the members in their corporate capacity were trying to get the better of themselves in their individual capacity.[1] Unfortunately many people fail to realise that the aim of co-operation is that all should share in the benefits in proportion to the support given by each to the enterprise; and accordingly it becomes advisable that co-operative laws should make obligatory a truly co-operative method of distributing the earnings. There are four points to be provided for:—the payment of interest on capital, the setting aside of a reserve fund, the provision of an educational fund and the distribution of profits in the form of patronage dividends.

In England, five per cent. was for long regarded as a fair rate of interest. In America, various States have fixed maxima, varying from five to ten per cent. Whatever sum be fixed, it represents all that co-operation allows to capital. It seems desirable to include a reference to this in this Act. The proportion to be set aside for reserve varies in different countries, and must vary

1. Cf. Rural Reconstruction in Ireland, p. 100.

according to the nature of the business done. The two English Acts do not prescribe any reserve funds at all, but there it is generally recognised that the fundamental obligations of business make a provision for reserve necessary.[1] The proportion of twenty-five per cent in this section seems too high for distributive societies and it has been proposed to amend the Act so as to allow Local Governments to prescribe a lower proportion for these.[2]

The New York State law relating to productive Co-operative Societies prescribes that profits shall be devoted, firstly, to payment of a dividend not exceeding six per cen ont capital stock; secondly, ten per cent to reserve, thirdly, five percent to an educational fund to be used in teaching co-operation; the balance is divided amongst members on transactions ⟨non-members get half rate⟩.

In Saskatchewan ⟨non-credit⟩ the directors must so apportion the net profits as ⟨a⟩ to set aside 15 per cent for a reserve fund until that fund equals at least 30 per cent. of the paid-up capital ; ⟨b⟩ to pay interest on the paid-up capital stock not exceeding 6 per cent :

---

1. Cf. Tetlow, p. 156.

2. In Japan a society on share basis may distribute its surplus only after "the losses have been made up and a contribution to the reserve fund at not less than one-tenth of the surplus is made until it reaches half the value of the capital stock. The balance may be distributed as dividend on shares not exceeding 5 per cent and as bonus in proportion to the patronage of the society by members".

The Co-operative Law of Sweden (1951) provides that part of the surplus upto 5 per cent shall be allocated to the reserve fund, until the fund, together with the share capital reaches a sum equal to the liabilities of the society or to fourtenths of its assets. By decision of the general meeting a portion of the surplus may be donated for purpose of public welfare. The law lays down 5 per cent as the maximum rate of interest on share capital.

(c) to divide the remaining profits among the patrons of the association whether shareholders or not, in proportion to the volume of business done, unless by by-law it be provided that the dividend due to a non-shareholder may be retained and credited to him on account of capital stock until an amount is accumulated equal to the par value of one share. The patron then receives a stock certificate and can thereafter share in the dividends like the other shareholders.

In Manitoba, the compulsory reserve is ten per cent until the 30 per cent limit is reached, the interest on stock must not exceed 7 per cent. If a non-shareholding patron receives a dividend, this must first be credited to the purchase of one share.

In Quebec, until the reserve fund is equal to the subscribed capital the total amount of the dividends distributed must not exceed eight per cent of the paid up capital. Thereafter distribution on a patronage basis is allowed.[1]

This section is not very clearly worded.

In societies with unlimited liability, no distribution of profits shall be made, without the permission of the Local Government. This general prohibition accords with Raiffeisen's object of creating capital where none existed before. The annual surplus was to be accumu-

---

1. The system of "individual reserves" makes it possible to reconcile the need of the society to have ample reserves at its command with the claim of each member on the reserve to the extent he has contributed to accumulate them. It is met with chiefly in agricultural marketing societies, particularly in Denmark and under the name of a "revolving fund" in Canada and the United States. It is also found in France in a few large consumer co-operative societies. The principle behind it is a simple one and it amounts to the idea of "deferred dividends". At the close of each year's trading the dividend or part of the dividend to which each member is entitled is retained by the society, to be paid back later on when the society has accumulated adequate collective reserves. (Co-operation I. L. O. 1956).

lated steadily until the fund was sufficient for working capital: thereafter the profits were to be devoted to objects of public utility for the general benefit of the members. In Europe, societies which have no shares pay no dividends and this was the original law in India. With the development of societies with shares and unlimited liability, there came a demand for dividends on shares and it was left to Local Governments to deal with this.[1] The general rule is to withhold permission until the society is full ten years old: after that, the rules vary. In the English Societies' Borrowing Powers Act, societies accepting deposits from non-members should not divide any part of the funds by way of bonus or dividend. The desirablity of placing all profits to reserve against the possibility of loss to any depositor is so clear, that it need not be discussed further. There thus emerge two important principles which should be embodied in the Act.

In societies with unlimited liability and without shares, no division of profits amongst the members should be allowed.

In societies with unlimited liability and with shares no division of profits should be allowed so long as there are any deposits from non-members.

The Madras Committee recommended that in primary credit societies the payment of dividends should be discouraged. The Burma Committee supported this and further recommended that no society of unlimited liability should by rule be allowed to distribute a divi-

1. Sir R. Carlyle introducing the New Act of 1912 said (Ray, p. 281) :—It will, I think, generally be recognised that the inclusion of provisions for the division of profits to the members of unlimited liability societies tends to bring in influences dangerous to the true co-operative spirit. We must, however, accept facts, and not insist on pushing too far our co-operative idealism.

dend so long as it holds deposits from non-members or borrows from its financing agency.

Where the liability is limited, the law should prescribe that out of the annual profits, a dividend on shares may be allowed not exceeding (by one or two per cent?) the ordinary interest rate paid by the society, a proportion must be put to reserve until the capital owned by the society is sufficient for its needs, and the balance may be distributed to members in proportion to their transactions with the society.

It seems to be doubtful whether this section would permit a store society to distribute a "dividend" on transactions more frequently than once a year. An amendment seems desirable to make it clear that this can be done. Rules may be made under section 43 (p) and (r) It is extremely important that the method of division of funds by way of profit should be strictly defined, as any mistake may lead to disputes.

Under section 46, the Punjab Government has granted a general exemption to all registered co-operative thrift societies; and has also allowed a regimental society (10th Hodson's Horse) to put to reserve only five per cent of its net profits. This was an old society whose membership changes as older soldiers retire and new recruits come in.

The Madras Committee held that in purely thrift societies, a reserve fund was unnecessary : it reduces the tangible advantages of membership and so might discourage thrift. They recommended exemption from the compulsory maintenance of a reserve fund. Punjab opinion, however, favours a small reserve fund to meet such eventualities as a decline in the value of investments. The rule, however, runs:—

"Credit societies with shares and whether with limited or unlimited liability which have for their main object the accumulation of their members' savings are exempt

from setting apart as reserve fund any portion of their profits, provided they have provision in their by-laws neither for borrowing from non-members nor for lending to their members."

Bihar and Orisssa has a similar rule for thrift and savings societies but requires 5 per cent of the net profits in any year to be carried to a reserve fund.

A few more points deserve notice.

The first paragraph of this section is the ground for remission of Income-tax. There are no profits in the ordinary commercial sense to assess. It also seems to prohibit a return of share-capital (except on liquidation) Further it is tobe noticed that the reserve fund becomes divisible as soon as registration is cancelled so that any design to preserve the fund for future societies, etc., must be clearly embodied in the rules.

The Act itself does dot permit of any division of profits in cash. In limited liability societies, division in cash may be provided for in the rules or by-laws: in unlimited liability societies, no division in cash may be made unless sanctioned by general or special order of the Local Government.

Contribution to charitable purpose.

34. Any registered society may, with the sanction of the Registrar, after one-fourth of the net profits in any year has been carried to a reserve fund, contribute an amount not exceeding ten percent of the remaining net profits to any charitable purpose, as defined in section 2 of the Charitable Endowments Act, 1890.

The definition is as follows :-

Section 2. In this Act "charitable purpose" includes relief of the poor, education, medical relief, and the

advancement of any other object of general public utility, but does not include a purpose which relates exclusively to religious teaching or worship.

It has been suggested that the maximum might now suitably be raised from ten to fifty per cent ; most co-operators would be in favour of an increase to twenty-five per cent.

The Bombay Act has raised the limit to a sum not exceeding 20 per cent of its net profits.

As pointed out by the Registrar, Bihar and Orissa societies may, and frequently do, carry part of the profits to special funds for education, etc., but any expenditure from such a fund still requires the sanction of the Registrar. The allocation of profits to such funds does not require sanction, it is the contribution from them to any charitable purpose that calls for sanction. Madras no longer requires the Registrar's sanction.

The question whether an Industrial and Provident society could devote any part of its funds to education was fought out at great length in England. The Rochdale Pioneers insisted on provision for this being made in their rules and the Registrar refused to register them. As the result of a long struggle the right was conceded by Parliament. Mr. Brabrook writes: From the earliest formation of co-operative stores, it has been made a feature of the scheme that some of the profits should be applied to educational purposes. This......embodies the idea of self-improvement and self-help, which is fundamental to the movement. The educational work of the movement may be divided into three branches: education in the principles and methods of co-operation, provision for the acquisition of knowledge on general

subjects, and arrangements for recreation and pleasure......[1]

In some countries, a contribution to some educational or charitable purpose is compulsory. For instance the Wisconsin (U. S. A.) law enacts that after paying six per cent on stock (shares) and ten per cent to reserve, the directors shall set aside five per cent of the net profits, for an education fund to be used in teaching Co-operation. Nine American State laws make an educa- tion fund compulsory, eleven require a by-law on the subject.

---

1. Bengal Act (Sec. 58) provides that after at least 25 per cent of the net profits has been carried to the reserve fund a society shall contribute an amount not exceeding 5 per cent of the balance for co-operative education or such other co-operative purpose as may be prescribed and contribute not more than 10 per cent of the balance for any charitable purpose. Bengal Rule 96 lays down that the amount of contribution for education should be credited to the Co-operative Development Fund for being spent on the education of members of co-operative societies in co-operative principles and practice or development of new types of co-operatives or on improvement of co-operative societies. This fund shall be administered by the authority constituted under sec. 81 or by a Committee appointed by the Registrar. Sec. 39A of the Bombay Act provides for contribution to the education fund of the Bombay Provincial Co-operative Institute by societies paying dividend at the rate of 4 per cent or more.

Since 1953 the problem of the co-operative education of office-bearers and members of co-operative societies and training of employees of the Co-operative Departments and co-operative organisations is being tackled on an extensive scale by the Reserve Bank of India jointly with the Govt. of India and All-India Co-operative Union. In March 1955 the Indian Co-operative Congress resolved that " it is the central responsibility of Co-operative Institutes and Unions to provide facilities for the training of the workers in the Movement both official and non-official and for the education of members of primary units in particular and of the public in general in the principles and practice of Co-operation as no outside agency can understand and appreciate the needs of the Movement as much as its own apex Institutes and Unions. It is therefore necessary that Co-operative Unions throughout the country should themselves take in hand schemes of co-operative research, training and education, each region developing programmes suited to its particular conditions with whatever assistance is available from the State concerned". The Congress called upon the co-operative organisations to make contributions out of their profits for financing the programme of training and education and suggested that "where co-operative opinion favoured, such obligation may be enforced through the Acts, Rules or Bylaws'

Inspection of Affairs.

Inquiry by Registrar.

35. (1) The Registrar may of his own motion and shall on the request of the Collector, or on the application of a majority of the Committee, or of not less than one-third of the members, hold an inquiry or direct some person authorised by him by order in writing in this behalf to hold an inquiry into the constitution, working and financial condition of a registered society.

(2) All officers and members of the society shall furnish such information [1] in regard to the affairs of the society as the Registrar or the person authorised by the Registrar may require.

Bombay and Burma have omitted the words "and shall on the request of the collector". Madras retains them.

Cf. Indian Companies Act of 1956, sections 234, 235 and 240. Under these sections, the Registrar may call for such information or explanation as he may consider necessary in order that documents submitted to him may afford full particulars of matters to which they relate. The company is bound to supply the information under a penalty, and the information is open to public inspection.

---

[1] In amending the Act, words should be inserted here requiring officers and members to produce books, etc., as in section 17(3). A penal clause for default might also be added. Madras has a rule: The Registrar, or any person authorised by him to hold inquiry under section 35 or 36 of the Act, shall have power by summons to compel any person to attend as a witness or to produce any document before him, and also to administer oaths under section 4 & 8 of the Oaths Act.

If the information discloses an unsatisfactory state of affairs, the Registrar may report to the Local Government, which is empowered to appoint a competent inspector to make an investigation Such an investigation may also be ordered on the application of the holders of one-fifth (Banking Company) or of one-tenth (any other company) of the shares.

The Industrial and Provident Societies Act (sec. 18) sensibly limits the applicants to members "each of whom has been a member of the society for not less than twelve months immediately preceding the date of the application". But ten members can apply. The Friendly Societies Act requires only one-fifth of the whole number of members: they must show good reason, and give evidence that they are not actuated by malicious motives. They may be required to give security for costs.

The Inspecting Officer may require the production of all or any of the books of the society and in England he may examine on oath any officer, member, agent, or servant of the society in relation to its business. (Cf. sec. 4 (a) Oaths Act, all persons, having by law or consent of parties, authority to receive evidence may administer oaths and affirmations......

Japanese Societies are subject to most strict inspection and supervision by the State.[1] The Report of the English A.O.S. for 1923 says: Committees should make it a practice to have their business methods thoroughly overhauled every five years.........It is the very essence of sound management, though it is pleasant enough to perform miracles of life saving, it would be pleasanter far and easier to help to keep societies well clear of rocks or shoals.

The Burma Committee recommended that all inspec-

1. Ogata: The Co-operative Movement in Japan. p. 91

tion notes of societies should be shown to the financing bank when required.

Clause (2)—Failure to produce or wilfully neglecting or refusing to furnish any information so required is an offence under the English Act and, in the case of compromise, under the Indian Companies Act [sec. 240, cl. (3)]. In amending the Act, a third clause should be inserted. The result of any enquiry under this section shall be communicated to the Society : and a fourth: An inspector appointed under this section may require the production of all or any of the books and documents of the society. (See Friendly Societies Act.)

The Bombay and Burma Acts have adopted the suggested third clause and Bombay and Madras have provided a penalty for neglecting or refusing information. (See Appendix.) Madras prescribes that the Registrar shall communicate the result to the financing bank, if any, to which the society is indebted. The new Act also empowers the Registrar or authorised inquirer to secure free access to the books, accounts, documents, securities, cash and other properties, to summon persons possessing or responsible for their custody or anyone believed to have knowledge of the affairs of the society, to insist on a general meeting being called and to determine the agenda (cf. Appendix).[1]

In England, the Registrar has no authority to interfere with the internal working of societies unless the members

1. The Bengal Act (sec. 84) provides that the Registrar shall hold the inquiry also on the application of the financing bank and creditors representing not less than one half of the borrowed capital of the society and the results of the inquiry are to be communicated to them. Sec. 35 of the Bihar Act lays down that an officer of the Society may be required to call a general meeting in connection with the inquiry and require the society to take into consideration such matters as he may direct. If he fails to call such a meeting or if there is no quorum the Registrar may call the meeting himself.

themselves (as in this section) call upon him to do so. It is very important that there should be ensured to the members some method of ascertaining what are the contracts into which their society has entered, how their Committee are carrying on the business and what is the financial condition of the concern. This right to an enquiry is important for the maintenance of the principle of equitable association. It gives a minority of the members the right to learn what is being done by the Committee elected by the majority. As Mr. Wolff points out, auditing, however skilled, is not inspection. It has regard to actuarial account keeping. Inspection applies to the use which the punchayat has made of its discretionary powers.........the punchayat needs such a sheltering authority to shield it against improper demands.[1] In co-operative banking the administrators that we have to deal with are for the most part mere amateur bankers, little skilled in the technical details of the business and without much experience...Raiffeisen found—just as Indian Registrars find in the present day and Irish organisers in Ireland—that the little Committees and Councils were in many cases not capable of keeping accounts and exercising their other functions in the most correct way. The idea of obligatory inspection by a higher authority is now everywhere approved The difficulty is to get people to agree respecting the shape which such inspection is to take.[2]

36. (1) The Registrar shall, on the application of a creditor of a registered society, inspect or direct some person authorised by him by order in writing in this behalf to- Inspection of books of indebted society.

1. Co-operation in India, p. 172.
2. Co-operative Credit for the U. S., pp. 161, et seq.

inspect the books of the society :—

Provided that :—

(a) the applicant satisfies the Registrar that the debt is a sum then due, and that he has demanded payment thereof and has not received satisfaction within a reasonable time ; and

(b) the applicant deposits with the Registrar such sum as security for the costs of the proposed inspection as the Registrar may require.

(2) The Registrar shall communicate the results of any such inspection to the creditor.

A penalty is required for refusal to produce the books. Bombay provides for this. It has changed "shall" for "may" alleging practical considerations. Burma considered the point but adhered wisely to "shall". Madras has elected for "may". Its new Act gives the Registrar or the inquirer authorised by him all the powers conferred in the preceding section. It further directs that the result of the inquiry shall be communicated to the financing bank, if any, to which the society is indebted.

Inspection, to a commercial banker, means an inquiry into the financial status of a society (Madras Committee). Supervision, on the other hand, involves constant administrative assistance in routine work, advice on financial matters, and general guidance, both from the business and the co-operative aspects.

This section is based on section 434, Indian Companies Act. If a creditor to whom the Company owes a sum exceeding Rs. 500 serves a demand which the Company neglects to pay for three weeks, the Company "shall be deemed to be unable to pay its debts", and may be wound up by the Court. The above section of the Co-operative Societies Act fixes no minimum to the sum: presumably three weeks would be a reasonable period. It also does not require a Registrar to wind up a society which is unable to pay its debts but it would be difficult to conceive of a Registrar refraining from ordering liquidation in such a case. A creditor who holds a decree against a society, being unable to detain the society in the civil prison, can only proceed by the attachment and sale of its property. There is no statute which allows a decree holder against a registered society to pursue his remedy in execution against a member, and therefore if the property of the society is insufficient the Registrar is bound to come to the assistance of the creditor and to enforce the liability of the members, if necessary, by winding up. The South African Act provides that if judgment has been obtained against the society and such judgment is not within three months thereafter satisfied, the plaintiff may proceed against all members or any member of such society in respect of such liability. Something similar should be inserted here when the Act is amended.

The Madras Committee recommended that the provincial bank should not only have power to inspect central banks financed by it but the responsibility for such inspection should be imposed upon it. Most people will agree that banks and societies should welcome an inspection of their books by their financing agency but such inspection should be rigidly confined to obtaining information for the financing bank. Experience, however, shows that this kind of inspection is apt to lead

to ignorant interference with the internal affairs. The new Act gives the financing bank the right to inspect the books of any society indebted to it. The inspecting officer must be certified by the Registrar as competent to undertake such an inspection. The inspecting officer has full right to secure information.[1]

It was proposed in Burma to empower the Registrar to require a society to pay any sum found on inquiry to be withheld without sufficient cause, and also to apply to the Collector for recovery as arrears of land revenue. The clause was omitted by the Select Committee on the draft Bill.

Costs of inquiry.

37. Where an inquiry is held under section 35 or an inspection is made under section 36, the Registrar may apportion the costs, or such part of the costs as he may think right, between the society, the members or creditor demanding an inquiry or inspection, and the officers or former officers of the society.

The Bombay and Burma Acts add:—and the members or past members of the society.

As both Acts make past members liable only for debts it is difficult to see how they can be liable for costs incurred, after they have ceased to be members. Madras keeps to the old wording.

Bombay further adds : provided that—

---

1. Sec. 82 of the Bengal Act provides for inspection by the Registrar or the financing bank. Under sec. 83 the Registrar may hold the inspection also on the application of a creditor after he is satisfied "that the alleged debt is a sum then due and that the creditor has demanded payment thereof and has not received satisfaction within a reasonable time". Section 37 of the Bihar Act provides for inspection by the financing bank as well.

(a) no order of apportionment of the costs shall be made under this section unless the society or persons liable to pay the costs thereunder has or have been heard or has or have had a reasonable opportunity of being heard :

(b) the Registrar shall state in writing under his own hand the grounds on which the costs are apportioned.

The Act also provides for an appeal from such order.

Madras gets all that is secured in (a) by inserting in the third line of the section after "may" the words : "after giving the parties an opportunity to be heard." It further enacts that costs may also be awarded to the financing bank in the case of an inspection by that bank.

38. Any sum awarded by way of costs under section 37 may be recovered, on application to a Magistrate having jurisdiction in the place where the person from whom the money is claimable actually and voluntarily resides or carries on business, by the distress and sale of any moveable property within the limits of the jurisdiction of such Magistrate belonging to such person. Recovery of costs.

The Bombay Act prescribes that the application shall be by the Registrar and adds : and such Magistrate shall proceed to recover the same in the same manner as if it were a fine imposed by himself

Madras enacts that the sum may be recovered as if it were an arrear of land revenue.

Dissolution of Society.

39. (I) If the Registrar, after an inquiry has been held under section 35 or after an Dissolution.

inspection has been made under section 36 or on receipt of an application made by three-fourths of the members of a registered society, is of opinion that the society ought to be dissolved, he may cancel the registration of the society.

Burma introduces an intermediate stage prior to cancellation, so here the Registrar "may order the society to be wound up."

Madras prescribes that a copy of the order shall forthwith be communicated to the society by registered post.

(2) Any member of a society may, within two months from the date of an order made under sub-section (1), appeal from such order.

(3) Where no appeal is presented within two months from the making of an order cancelling the registration of a society, the order shall take effect on the expiry of that period.

(4) Where an appeal is presented within two months, the order shall not take effect until it is confirmed, by the appellate authority.

Madras adds:—and such confirmation is communicated to the society by registered post.

(5) The authority to which appeals under this section shall lie shall be the Local Government.

Provided that the Local Government may, by notification in the local official Gazette, direct that appeals shall lie to such Revenue-authority as may be specified in the notification.

Burma substitutes "other" for "Revenue" in the penultimate line.

For Bombay section 47, see Appendix.

As already indicated, a Registrar is morally bound to cancel the registration of a society that is unable to pay its debts.

As the Full Bench of the Patna High Court noted, it must be assumed that the Registrar will act judicially. But the Burma Committee found that the Registrar had repeatedly been called upon by the Provincial Bank to inspect societies and he had failed to take effective measures to recover the loans or to liquidate the societies. The Committee therefore recommended an amendment to make it clear that the Registrar should ordinarily order to be wound up any society which was neglecting to pay up sums due on the demand of its creditor.

Members contemplating an application for cancellation under clause (1) must bear in mind the periods fixed, under sections 23 and 24, for the termination of the liability of past and deceased members. When the Act is amended it is hoped that clauses (3) and (4) will be amended to make it clear that a liquidator may be at once appointed with power to take possession of the books and assets pending the result of the appeal, if any.[1]

1. Sec. 47 of the Bombay Act adds one more ground for dissolution viz. when a society has not started working after registration or has ceased working, or where it possesses shares or deposits not exceeding Rs. 500.

Cancellation of registration of society.

40. Where it is a condition of the registration of a society that it should consist of at least ten members, the Registrar may, by order in writing, cancel the registration of the society if at any time it is proved to his satisfaction that the number of the members has been reduced to less than ten.[2]

The Bombay Act correctly adds the words "who are majors" after "members" in the third line : and adds "such members" after "ten" in the last line. Madras prefers : who have attained the age of majority.

If a registered company carries on business for more than six months after the number of members is reduced below seven, every member, who is cognisant of this fact, is liable for the payment of the whole debts of the company contracted during that time and may be sued for the same without joinder in the suit of any other member (sec. 45, Companies Act). That is to say, limited liability ceases. The South African Act, in addition, makes the members liable to a fine of five pounds a day.

Effect of cancellation of registration.

41. Where the registration of a society is cancelled, the society shall cease to exist as a corporate body—

(a) in the case of cancellation in accordance with the provisions of section 39, from the date the order of cancellation takes effect;

---

2. In the case of societies registered under the Friendly Societies Act, 'it would seem that if the number of members falls below seven, the society would not cease to exist or lose its rights, though if there were less than three it could hardly be said to exist, as the signature of three members is necessary to an amendment of rules' (Fuller, p. 36) In South Africa a society shall be dissolved when the number of its qualified members is reduced below seven.

(b) in the case of cancellation in accordance with the provisions of section 40, from the date of the order.

Cf. sections 45 and 145 of the Indian Companies Act, The Registrar, here, takes the place of the Court under that Act. Cancellation may take place—

(i) as the result of an inspection made of his own motion;

(ii) as the result of an inspection made at the instance of the Collector;

(iii) as the result of an application by the Committee or one-third of the members;

(iv) on the society proving to be unable to pay its debts;

(v) at the request of three-fourths of its members, and

(vi) on its members declining below ten.

Following the English Acts, the Registrar could exercise his power of cancellation—

(a) on proof that a certificate of registration had been obtained by fraud or mistake,

(b) or that a society exists for an illegal purpose;

(c) or that it has violated any of the provisions of this Act (e.g. persistent lending to non-members sec. 29);

(d) or has ceased to exist (cf. Companies Act, if it does not commence business within a year).

(e) (Cf. Committee's Report, para 86) or that there is no hope of eventual solvency or progress.

Examples of illegal purpose are the pursuing of other business objects than those indicated in section 4, if, for instance, a Central Bank forsook its sole object of facilitating the operations of co-operative societies and took to general banking business it should be dissolved, similarly if a supply or stores society took to credit business. In

England the Seditious Meetings Act exerted a very wholesome influence in preventing societies from becoming political bodies. A stores society embarking on general business with non-members might be dissolved at the instance of competing traders. Repeated failure to observe its own by-laws might entail cancellation; for instance, the conditions in section 6 as to residence of members in a fixed area and their similarity in tribe, class or occupation, must be adhered to. The Government of India have remarked that it is intended that the Registrar should, in sanctioning the proposed by-laws of a credit society, satisfy himself that proper residential and class qualifications are rendered obligatory for future members and the qualifications should not be altered save by an amendment of the by-laws sanctioned by the Registrar (sec 11).

If a credit society began to divide its funds amongst the members without first meeting all its obligations to creditors, the Registrar would have to interfere at once. In Germany, a creditor may propose the opening of bankruptcy proceedings and the opening of such proceedings serves at once to dissolve the society.

The limit of ten members in section 40 presumably refers to major members only and the Bombay and Madras Acts specifically provide for this. Minor members must never become an appreciable proportion of the whole, else the three-fourths majority might consist of a few major members who have managed to secure representation of the minors.

This majority of three-fourths of the total number of members is probably too high. A joint-stock company requires a resolution to be carried by three-fourths of the members present and this has to be confirmed by a similar majority at a subsequent meeting. The German Act requires only a majority of three-fourths of the members present.

The effect of cancellation is to transfer the control of the society to the hands of the liquidator. The society ceases to enjoy privileges but retains all liability actually incurred and any such liability may be enforced against it as if the cancelling had not taken place. The shares become liable to attachment when registry is cancelled and members promptly incur liability for debts. Debts owned by members can no longer be recovered through arbitration proceedings and the liquidator has to resort to the Civil Courts ; but the Bombay Act empowers the liquidator to get disputes referred to arbitration. If the society transacts business after cancellation each member becomes liable for the payment of the whole debts so incurred and may be sued for these individually. Liability is limited only to debts incurred prior to cancellation : the latter extinguishes the corporate body and leaves a number of individuals.

A society, whose registry has been cancelled, can only be re-admitted to registry as a new society making a fresh application (unless of course, the order of cancellation was upset on appeal).

It should be noted that only present members can apply for cancellation. Past members and persons claiming through deceased members cannot seek to liquidate their liability by procuring dissolution.

In England before the Registrar can cancel registration, he must give two months' clear notice in writing to the society specifying briefly the ground of the proposed cancellation. No such notice is prescribed in this Act but a rule could probably be made under section 43 (1).

See Bombay Act, section 49 in Appendix.

Section 35 does not require the Registrar to communicate the results of his inspection to the society (cf. sec. 36 (2)) but presumably he does so. In England, a society is not bound to act upon the advice tendered and it is left to the one-third minority to persuade their fellow-

members. In India, the Registrar can enforce his opinion by dissolving the society, this being practically the only legal punishment open to him. The Local Government may withdraw privileges (Sec. 46)[1]

Winding up.

42. (I) Where the registration of a society is cancelled under section 39 or 40, the Registrar may appoint a competent person to be liquidator of the society.

Burma adds: and such person......shall have power to take immediate possession of all assets belonging to the

1. There are many societies which are financially sound but are mismanaged due to the negligence of the Managing Committee and efforts to improve the management have proved to be futile. Act II of 1912 has only one remedy, viz., cancellation of the registration and liquidation, whereas if the existing Managing Committee is removed and steps be taken to bring in new members on the Committee these societies may be revived. Section 43 of the Madras Act provides for the supersession of the Committee by the Registrar for a period not exceeding two years and the appointment of an officer who, under the direction of the Registrar, will carry on the management of the society. The remuneration of this officer will be paid from the funds of the society. On the expiry of the period of supersession he will arrange for the constitution of the new Committee in accordance with the by-laws. Under sec. 41 of the Bihar Act the Registrar may dissolve the Committee and order that any of its members shall be disqualified from holding office for a period not exceeding three years. When the Committee is dissolved the society shall elect a new Committee but if the society fails to elect, the Registrar may require an officer of the society to call a general meeting. On his failure to call the meeting the Registrar may do it himself. The aim of the section is to enable the society to change its erring Committee by democratic methods but it has not proved to be effective. A few persons or groups who dominate over other members can obstruct all efforts to improve the working of the society. The procedure laid down under sections 25 to 27 of the Bengal Act is certainly an improvement over the provisions in the Madras and Bihar Acts as a chance is given to the society to elect a new Committee in place of the dissolved Committee and on its failure to do so the Registrar may appoint "a suitable person" to manage the affairs of the society for a period not exceeding one year and arrange for the reconstitution of the Committee within this period. This person shall exercise all the powers and perform all the duties which may be performed by the Committee or any officer of the society.

society, and of all books, records and other documents pertaining to the business thereof and to carry on the business of the society, so far as may be necessary for the beneficial winding-up of the same.

In Bombay and Madras the requirement that the liquidator shall be competent is omitted,

(2) A liquidator appointed under sub-section (1) shall have power:

Burma inserts : as soon as the order of winding-up takes effect :

(a) to institute and defend suits and other legal proceedings on behalf of the section (1) shall have power—

(b) to determine the contribution to be made by the members and past members of the society respectively to the assets of the society;

(c) to investigate all claims against the society and, subject to the provisions of this Act, to decide questions of priority arising between claimants;

(d) to determine by what persons and in what proportions the costs of the liquidation are to be borne; and

(e) to give such directions in regard to the collection and distribution of the assets of the society as may appear to him to be necessary for winding-up the affairs of the society.

(3) Subject to any rules, a liquidator appointed under this section shall, in so far

as such powers are necessary for carrying out the purposes of this section, have power to summon and enforce the attendance of witnesses and to compel the production of documents by the same means and (so far as may be) in the same manner as is provided in the case of a Civil Court, under the Code of Civil Procedure, 1908.

(4) Where an appeal from any order made by a liquidator under this section is provided for by the rules, it shall lie to the Court of the District Judge.

(5) Orders made under this section shall, on application, be enforced as follows :—

(a) when made by a liquidator, by any Civil Court having local jurisdiction in the same manner as a decree of such Court;

(b) when made by the Court of the District Judge on appeal, in the same manner as a decree of such Court made in any suit pending therein.

(6) Save in so far as in hereinbefore expressly provided, no Civil Court shall have any jurisdiction in respect of any matter connected with the dissolution of a registered society under this Act.

Burma inserts after "dissolution" or winding-up.

The corresponding sections, 50 and 51, of the Bombay Act and 56 of the Burma Act are reproduced in the Appendix.

This section follows the usual provisions as to liquidation Burma, however, has introduced an intermediate stage of "winding-up" : a society is first ordered to be wound up and during this process it continues in existence: if the Registrar thinks the society should continue to exist he may (section 58) cancel the order for winding-up; otherwise he must, after considering the final report of the liquidator, order the registration to be cancelled.

In Germany, the liquidation has to be effected by the Committee of Management unless by the articles or by resolution of the general meeting it is entrusted to other persons. At least three liquidators must be appointed; one-tenth of the members may have the liquidators appointed by the Court.

Section 43 (t) provides for rules of procedure. The liquidator becomes invested with full powers on appointment. The Madras Committee recommended that the Registrar should be enabled to give the liquidator directions from time to time, and the Madras Act places the powers of the liquidator "subject to the control of the Registrar": in Bombay the liquidator acts "with the sanction of the Registrar". In the Companies Act the Court confers the powers.

Clause (2) (a) —The cancellation of registration terminates the existence of the corporate body (sec. 41) and therefore the power to institute and defend suits (sec. 18) passes to the liquidator. The words "by his name of office" have been added to remove the doubt as to whether the suit should be in the name of the society or in the liquidator's official name. In any suit brought by the society, a depositor could set off his deposit against the sum claimed. In amending the Act, the liquidator should be given power to refer disputes to arbitration.

Clause 2 (b).—The benefits of registration appear in winding-up proceedings. In an unregistered society a

creditor may sue any member he pleases for his whole debt and leave him to recoup himself out of the assets or from his fellow members. In a registered society, the assets are realised and only the deficiency has to be made up by contributions from members and past members.

It is curious that the reference is only to past members and not to deceased members whose estates apparently are free from contributions. In view of section 24, it seems correct to assume that the liquidator can levy contributions from their estates, but he could only enforce these by civil suit. The Bombay and Madras Acts specifically provide for this by inserting the words: "or by the estates or nominees, heirs, or legal representatives of deceased members". A similar amendment is desirable everywhere. Madras further adds: "or by any officers or former officers". It has been suggested that the wording of this clause seems to prohibit the liquidator from modifying his order determining the contributions of members from time to time. It is thought that, under the law as it stands, a liquidator cannot use the unlimited liability of the non-borrowing members of the society until he has exhausted all possible steps against defaulting members. It is, therefore, proposed to amend the section by the insertion of the words "from time to time" after "determine". The Bombay and Madras Acts insert these words.

The Government of Burma has been advised that a liquidator's order under section 42 (2) (b), (d) or (e) is not a decree within the meaning of the Civil Procedure Code. Effect can be given to these orders (5) (a) by means of the machinery of a Civil Court having local jurisdiction.

A liquidator has not power to transfer his duties to other persons. He may appoint an agent to assist him and such agent could apply for the enforcement of

orders. The liquidator cannot divest himself of his responsibilities.

Contribution usually means the amount payable by a member as such and does not include debts payable to the society. It is the unpaid portion of the liability. In a limited liability society with fully paid-up capital, it is nil unless it be held that dividends have been paid without being earned, in which case perhaps these might be recovered. It is not prescribed whether in an unlimited liability society with share-capital, the liquidator should fix contributions according to shares held or equally. As members' liability is equally irrespective of the number of shares held, the contributions should be equal up to the limit of the capacity of the smaller members, thereafter it is inevitable that the richer should pay more[1]. Bombay and Madras specially provide that "contribution" shall include "debts due from such members or persons". Burma says "debts payable and the contribution" thus keeping the correct definition of "contribution". But the provision seems to give the liquidator power to order payment of debts even if barred by limitation, and when dealing with societies of unlimited liability the term used is not "members" but "persons", so that the liquidator may order payment from non-members (e.g. sureties). This is a serious power to confer on the liquidator. The Burma Committee pointed out that the liquidator was thus practically given the power of a civil court to adjudge claims for debts, and there was no appeal provided. They thought this was unnecessary and liable to lead to ill-feeling. They preferred the

1. "The unlimited liability, which still remains the corner stone of the Raiffeisen system, is harder on the poor than on the rich, as assessment for losses are made share and share alike and might completely wipe out a small estate without noticeably diminishing a larger one". Herrick, p. 293.

Madras Committee solution of conferring on the liquidator the power to refer disputes to the Registrar for arbitration. In some provinces, all claims for debts are referred to arbitration before the order for winding-up is issued.

Also it is not clear whether members and past members would be regarded as equally liable or whether contributions should only be demanded from past members when the liability of existing members is not sufficient to cover deficiencies. On the analogy of Company Law, in a limited liability society, contribution would first be demanded from existing members up to the limit of the uncalled portion of their share and thereafter from past members. In unlimited liability societies past members may be made to contribute forthwith. The basis of the liability of past members (secs 23 and 24) should be the balance-sheet of the year in which they ceased to be members. The liquidator has no power under this section to decide who are members and past members and the court (clause 5 (a)) cannot apparently hear objections from persons denying liability. Limitation for suits for unpaid calls on shares is six years.

If a member becomes insolvent, the assignee may disclaim his shares and the liquidator may claim for the uncalled sum but the insolvent member cannot be made a contributory.

From the list of powers there are some important omissions. Neither the Act, rules, nor by-laws contain any directions as to the disposal of the books of a dissolved society.[1] But Madras now enacts that when the

1. Semble Companies Act, section 242. The disposal of books should be decided by the Registrar or the Society. They may be destroyed after three years. Bengal has now got a rule: "'The liquidator shall......submit to the Registrar ....a final report and make over to the Registrar all books, registers and accounts belonging to the society and all books and accounts relating to such proceedings kept by him".

affairs of the society have been wound up the liquidator shall deposit the records of the society in such place as the Registrar may direct.[1]

Outside Bombay and Madras it is not competent for the liquidator to make a decree under clause 2 (b) for loans owed by a member. There is nothing corresponding to section 469, Indian Companies Act, empowering a Court, after making a winding-up order, to order any contributory to pay any money due from him to the Company, exclusive of any money payable by virtue of any call. As compulsory arbitration is now the rule, it is difficult to see the objection to conferring on the liquidator the power, formerly held by the society, to refer disputes to arbitration. The Bombay Act confers this power but Madras restricts compulsory arbitration to societies still registered.

A liquidator cannot carry on the business of the society. But the Bombay and Madras Acts empower him to carry on the business of the society so far as may be necessary for the beneficial winding-up of the same.

Madras has a clause which appears to amplify clause 2 (c) above:—to pay claims against the society (including interest up to the date of cancellation of registration) according to their respective priorities, if any, in full or rateably, as the assets of the society permit, the surplus, if any, remaining after payment of the claims being applied in payment of interest from the date of such cancellation at a rate fixed by him but not exceeding the contract rate in any case.

---

1. Another important omission is with regard to the liquidator having the power to effect a compromise or any arrangement with any creditor in respect of his claims or with any member of the society in respect of any contribution to be made by him. Bombay Act, sec 50 (b) and (c) authorises the liquidator to make a compromise. Similar provision has been made in Bengal Act sec. 91.

Clause (3).—The Fourth Conference (1909) wished liquidators to be recognised as public servants within the meaning of the Penal Code (secs 174 and 175) which makes punishable failure to attend when summoned and failure to produce a document when called upon to do so.[1] Both Bombay and Madras Acts provide penalties for such failure. A liquidator cannot apparently summon individual contributories but he can, of course, and in fact must summon a general meeting.

Clause (4)—The High Court of Allahabad has held that where no appeal is provided for in the rules, neither the District Judge nor the High Court can question the liquidator's order and the subordinate Court has no option but to enforce the order, if it could possibly be said to be an order under section 42 of the Act. The following remarks of the judges is worth quoting: It is quite clear that the policy of the Act was that matters arising under the Act should be settled without litigation in the Court. If litigation were permitted, the whole object of the Co-operative Societies Act would be defeated. We think that in the present case, we may depart from our usual practice of not saying anything which is not absolutely necessary for the decision of the case, because we are all interested in the good working of the Co-operative Societies Act. It seems to us that probably the liquidator was wrong in passing an order that each of these debtors (members) should be jointly and severally liable for the amount of each other's mortgages. If he required money for the purpose of liquidation and

1. The Madras High Court have held in Kuppu Govinda Chettiar v Uthukottai co-operative society (A. I. R. 1940 Mad 831) that the liquidator was not a public officer within the meaning of sec 2(17) of the Civil Procedure Code merely because he was invested with certain quasijudicial powers and his duties were of the nature of public duties. Sec. 58 of the Bihar Act provides that among others a liquidator "shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code".

for the discharge of the debts of the society, he had clear power to determine the contributions to be made and we think that it would have been more correct had he made his order in this form[1] and then proceeded to take steps to recover from each............Similarly the Oudh Judicial Commissioner has held that a Civil Court cannot, in view of section 42(6), entertain a suit for a declaration that an order of the liquidator passed under section 42 (2) of the Act is *ultra vires* and without jurisdiction and cannot be executed.[2] The Bombay High Court has taken the same view. Sub-section (6) ousts the jurisdiction of the Civil Courts entirely. There can be no doubt that all the liquidator's acts as liquidator, in all ordinary cases, are concerned with the dissolution of a registered society, and it is only if a liquidator's act or order is shown to be clearly *ultra vires*, that is outside the powers conferred upon him by law as a liquidator, that the Civil Court could possibly intervene.[3]

In Bombay an appeal against an order of a liquidator sanctioned by the Registrar lies to Government within two months from the date of communication. In Madras the appeal lies to the Registrar.[4]

In Bengal, Assam, Central Provinces, and Behar and Orissa, the local Public Demands Recovery Acts have been amended so as to make recoverable as an arrear of land revenue any sum ordered by a liquidator to be recovered as a contribution to the assets of a society or as

---

1. I.L.R., Allahabad, XL. 1918, p. 89.
2. Indian Cases: XLIV, 1918, p. 353.
3. I.L.R., Bombay, XLIV. 1910, p. 582.
4. Under sec. 44(5) and (6) of the Bihar Act, appeals against the orders of the liquidator under clauses (b), (c), (d), (e), (g), (h) of subsection 3 shall lie, with the special sanction of the Registrar, to the court of the District Judge within three months from the date of communication of the order and the order of the liquidator subject to any order of the Registrar in revision or to any order of the District Judge on appeal, shall be final.

costs of liquidation, or as members' debts. In the Uttar Pradesh (Act III of 1919) the Co-operative Societies Act has been amended so that this section shall be construed as if—

(a) after sub-section (4) of the said section the following sub-section were inserted, namely: "(4A) Any sum ordered under this section to be recovered as a contribution to the assets of the society or as costs of liquidation may be recovered, on a requisition being made in this behalf to the Collector by the Registrar of Co-operative Societies in the same manner as arrears of land revenue," and

(b) at the beginning of sub-section (5) of the said section the following words were inserted, namely:— "Save as provided in sub-section (4A)."

This U. P. Act has been extended to Ajmere-Merwara (1922). Madras followed suit in 1920, and its Act was extended to Coorg. As to the benefits of this amendment, Assam reported in 1922 that "much delay still occurs in the recovery of assets through the certificate procedure. The deputy commissioners were requested to effect speedier collections but so far there has been little or no improvement in collections. Some liquidators are again resorting to the Civil Courts for enforcement of their orders owing to delays in the courts of certificate officers:" and again in 1923: "the experience of the past three years has been sufficient to demonstrate that, in Assam at least, the certificate procedure does not provide a method of recovery swifter and surer than the ordinary Civil Court procedure." Madras (1922-23) also reports that in spite of the amendment "the rate at which liquidation proceedings are carried through still seems very slow" Bombay inserts a special clause in its Act empowering the liquidator to issue requisitions under section 59 (of its Act) upon the Collector for the recovery as

arrears of land revenue of any sum ordered by him to be recovered as dues from members or as a contribution to the assets of the society or to the costs of liquidation. Burma (section 69) also enacts that all sums payable by order of a liquidator (including costs of liquidation) shall be recovered in the same manner as arrears of land revenue on a requisition being made to the Registrar to the Collector.[1]

Madras amplifies sub-clause (6) into a special section 48 :—........no civil court shall take cognisance of any matter connected with the winding-up or dissolution of a society......and when a liquidator has been appointed no suit or other legal proceeding shall lie or be proceeded with against the society except by leave of the Registrar and subject to such terms as he may impose.[2]

Rules

43. (1) The Local Government may, for the whole or any part of the Province and for any registered society or class of such societies, make rules to carry out the purposes of this Act. Rules.

1. "In Madras the Registrar and his officers have been given powers of Civil Courts and have their own agency for recoveries. The system in Madras has, we understand, been on the whole successful. We recommend that as a general rule the Registrar and his officers should either be given powers of civil courts or in the alternative dues of co-operative societies should be recovered as arrears of land revenue. In the latter case the Collectors should be asked to depute special officers for this work in order to expedite recoveries." (Co-operative Planning Committee Report, p. 167).

2. It was held that the Court had no jurisdiction to question the acts of the liquidator in matters connected with the dissolution of the society. (Co-operative Society Mauza Asa V Quadri., A.I.R. 1934 Oudh. 481) also Mehedi Munshi v. Inspector of Co-operative Societies Goalpara, I.L.R. 1943-2 Cal, 186).

Where, by any Act of the Governor-General in Council.........a power to issue.........rules......is conferred, then that power includes a power, exercisable in the like manner and subject to the like sanction and conditions, if any, to add to, amend, vary or rescind any...rules so issued. (General Clauses Act, sec. 21)

The Uttar Pradesh have rules dealing with transactions with persons other than members (sec. 31). Transactions with non-members are prohibited in the ordinary course of business except during such period as the Registrar may prescribe. Also the following rules governing transfer of shares and reduction of capital :—

(1) Shares held by individuals, in a central bank shall not, without the sanction of the Board of Directors, be transferable, except to nominees, heirs, and legal representatives of such individuals.

(2) Such shares shall not be withdrawable.

(3) Shares held by societies in a central bank shall not, be withdrawable or transferable, except when a society is dissolved or when it is affiliated to another central bank, in which latter case the shares shall be transferred to such central bank. No withdrawal or transfer shall be permitted unless the shareholder has paid up the entire dues of the central bank :

Provided that, in the case of re-organisation of a share holding society into two or more societies, the central bank may, in consultation with the Registrar, allow the transfer of such proportion of the shares held

by the original society to the new societies as is considered suitable.[1]

(4) No central bank shall buy its own shares unless a simultaneous reduction of subscribed share-capital is effected and sanctioned in the manner hereafter provided.

(5) A central bank may by a resolution passed at a general meeting specially convened for the purpose, reduce its share-capital in any way and, in particular, may—

(a) extinguish or reduce the liability on any of its shares in respect of share capital not paid up; or (b) cancel any paid-up share-capital; or (c) pay back any paid-up share-capital which is in excess of the wants of the central bank;

Provided that, except in the case of withdrawal or transfer permitted under clause (3) of this rule, the share capital represented by the shares held by Co-operative Societies shall not be reduced unless the share capital held by individuals is totally extinguished.

(6) A special resolution passed by a general meeting for the reduction of share-capital shall be subject to the confirmation of the Registrar.

(7) The Registrar may direct the central bank desiring to reduce its share capital to issue a notice by

1. With the extension of the activities of a society and with the increase in its size the amalgamation or division of existing societies will be inevitable. There is no provision for this in Act II of 1912 hence the societies have to be liquidated before they can be reorganised. Sec. 13 of the Madras Act and sec. 15 of the Bombay Act have provided for this but the procedure laid down in Bengal is simpler. After the preliminary resolution regarding the proposed amalgamation or splitting up is passed notice should be sent to members and creditors. The second general meeting will be held after two months to confirm the preliminary resolution and provision shall be made for the refund of share money of members unwilling to join the new society and for the satisfaction of the claims of creditors who may have made the demand. After the share money has been refunded and claims of creditors satisfied the assets and liabilities of the original society or societies shall vest in the new society or societies.

registered post to every creditor, who shall be entitled to object to the reduction within one month from the date of the receipt of such notice.

(8) If a creditor does not consent to the reduction of the share-capital, the Registrar may dispense with the consent of that creditor, on the central bank securing payment of the debt or claim within a time specified by him.

(9) The Registrar, if satisfied with respect to every creditor of such bank who has objected to the reduction, that either his consent to the reduction has been obtained or his debt or claim has been discharged or has determined or has been secured, may make an order confirming the reduction on such terms and conditions as he thinks fit.

(10) The resolution for the reduction of share-capital shall take effect from the date on which it is confirmed by the Registrar.

The Seventh Conference (1913) thought that a rule was desirable to define the classes of documents in a Registrar's office which the public have a right to inspect and to prescribe fees for the supply of certified copies of such documents (cf. notes to secs. 25 and 26).

The Uttar Pradesh and Punjab have the following:

(i) Any member of the public shall be permitted on payment of a fee of one rupee for each occasion of inspecting to inspect for any lawful purpose any public documents (exclusive of documents privileged under secs. 123, 124, 129, and 131 of the Indian Evidence Act, 1872) filed in the office of the Registrar, Co-operative Societies, in particular of the following documents, namely :—

(1) Registration register (Bombay has "applications for registration").

(2) Registration certificate of a society.

(3) The registered by-laws of society and amendments effected in such by-laws.

(4) An order cancelling the registration of such a society.

(5) An order directing the liquidation of such a society.

(6) The annual accounts of a society (Bombay has "audit memo of a registered society").

For certified copies the fees are Rs. 3 for a registration certificate and two annas for each hundred words of other documents.

Bombay had a rule: no society may take any action which would involve the society in the discussion or propagation of controversial opinions of a political or religious character, and the Registrar may prohibit any action or rescind any resolution which in his opinion is of such tendency. The reference to political matters has now been omitted. Burma is more delicate: its rule runs: The Registrar may rescind (and order to be deleted in the records of the society) any resolution or action of an officer or a committee of a society or of a society, which is, in his opinion, outside the objects and scope of the society, as defined in the by-laws of the society, and may order the record of such resolution or act to be deleted in the records of the society.

Rules might be made (cf. sec. 19, Industrial and Provident Societies Act) that no registered society with limited liability which has any withdrawable share-capital shall carry on the business of banking, and no such society shall make any payment of withdrawable capital while any claim due on account of a deposit is unsatisfied.

The Uttar Praddsh rule permitting both bonus and dividend in societies for production and distribution has been given under section 33.

(2) In particular and without prejudice to the generality of the fore-going power, such rules may

(a) subject to the provisions of section 5 prescribe the maximum number of shares or portion of the capital of a society which may be held by a member;

German Act: "In societies with unlimited liability members may only hold one share." The absence of such a rule is fraught with risk (Nicholson). "In these societies, the share is primarily a means: (a) of compelling thrift: (b) of providing the guarantee of the member which, in these unlimited societies, extends to the whole of his property and of thereby obtaining credit: it is not intended, except secondarily, as a means of furnishing funds directly, still less as an investment by the members as is the case in an ordinary joint-stock company; hence the present limitation, the holding of a single share renders the holder responsible in all his property, and the holding of other shares would, therefore, not increase the guarantee offered by him while it might give him an undue preponderance in the society."

But in practice, the subscription of additional shares (on which no dividend or a small one is paid) strengthens the financial position of the society, protects the unlimited liability and assists in its ultimate abolition by hastening the collection of sufficient owned funds to meet the needs of the members.

Such rules may be necessary to preserve the benefits of the society for persons of limited means (cf. preamble and notes) and to deter persons of ample means from securing any undue share of influence especially where the rule of one man one vote is not observed. In the Punjab the maximum number is one-fifth of the whole, whether the liability be limited or unlimited. In Bengal, Burma and Assam, this maximum applies to societies with limited liability only. The contributions to share-capital represent the paid-up portion of the liability.

(b) prescribe the forms to be used and the conditions to be complied with in the making of applications for the registration of a society and the procedure in the matter of such applications :—

All provinces seem to have prescribed forms, the main requirements are:—

(1) Name of proposed society (see note to sec. 43 (c)).

(2) Registered address with nearest Post Office (sec. 15).

(3) Kind of liability, whether limited or unlimited (sec. 4).

(4) Adherence to the proposed by-laws (sec. 8 (3)).

(5) Formal application to be registered (sec. 8 (1)).

Some add:—

(6) Language in which the books and accounts will be kept. Other details, required in some provinces, are usually contained in the by-laws, which accompany the application.

All require the applicants to sign or attest (sec. 8 (2) (a)), except in the case provided for in section 8 (2) (b).

Section 8 (3) requires one copy of the by-laws to be submitted. Most rules require two copies, one of which is usually returned certified as duly registered (cf. sec. 11 (3)). Bengal requires a third copy, which is sent to the Central Bank to which the society is to be affiliated.

The Registrar should issue a certificate of registration (cf. sec. 10) to the society, and apparently always does so.

Bengal, Bombay and Burma, etc., prescribe that in every case in which the Registrar refuses to register a society, he shall record in writing the reasons for his refusal and shall communicate his decision to the applicants. The Madras Act seems to require that an order refusing to register shall be communicated by registered post.

The Committee on Co-operation advocates full enquiry into all applications and regard it as necessary that the Registrar should be able to ascertain[1]:—

(1) Whether the proposed members have really assimilated the principles of co-operation;

(2) Whether they appear to be too involved in debt to make a society successful (and for this purpose a statement showing, though not in great detail, the assets and liabilities of intending members should be submitted);

(3) Whether adequate working capital is available in the movement;

(4) Whether the applicants are men of good character and the village as a whole free from the taint of litigousness; and

(5) Whether means are at hand to provide for the necessary supervision of the society when formed.

Enquiry should also be made as to the suitability of the proposed Secretary and Committee.

(c) prescribe the matters in respect of which a society may or shall make by-laws and for the procedure to be followed in making, altering, and abrogating by-laws, and the conditions to be satisfied prior to such making, alteration, or abrogation ;

Abrogate—repeal or rescind.

The Act does not confer powers upon a registered society to make by-laws. It must have them before registration (sec. 8 (3)) and may amend them (sec. 11).

---

1. "With the pressure to create new societies, there is a danger that they may be formed without proper preparation. In the Punjab there used to be a rule that registration should be preceded by at least three visits to the village concerned from a member of the staff, to ensure members being taught the nature of the society, and their rights and obligations under its by-laws. The rule may not be appropriate everywhere under the changed conditions of today but there should obviously be some rule of this kind". (Darling ; p. 18).

In most Acts, by-laws upon certain points are compulsory: but matters dealt with in the Act in some countries are left to by-laws in others. The Indian Act requires by-laws only upon (1) area, (2) tribe, caste or occupation of members, and (3) registered address (secs. 6 and 15), but presumably the object (sec 4) must also be specified. It is thus left to rules under this clause to impose compulsory by-laws, and generally speaking deficiencies have in all provinces been made good by rules under succeeding clauses.

As membership is the very essence of a society, it is obviously necessary to have by-laws governing the terms of admission, withdrawal and expulsion of members and in most countries the laws inisist on these.

Most Acts impose a long list of matters upon which by-laws must be framed, unless these are dealt with in the Act itself. In some countries model by-laws are annexed to the Act.

Most Local Governments have issued rules for compulsory by-laws on the following points:—

(1) Name—see note below.

(2) Address (sec 15). Bombay requires the addresses of branches also.

(3) Objects for which the society is established. The whole of the objects must be set forth and they must be in conformity with section 4.

(4) Area of its operations or area of membership. Bombay requires the tribe, class, or occupation of members if the membership is proposed to be so restricted.

(5) Purposes to which its funds may be applied (which must be such as are requisite for carrying out the objects).

(6) Qualifications required for membership and terms for admission of members, etc. (cf. clause (d) of this section and sec. 12).

(7) Right and liabilities of membership (see section 4 and 12). Madras insists on the insertion of any fines which members may be liable to.

(8) Withdrawal and expulsion of members (see clause (m) below).

(9) Payments to be made on withdrawal, expulsion, ineligibility or death of members (see clauses (m) and (n) below).

(10) Transfer of share or interest of a member (see sec. 14).

(11) The manner in which capital may be raised (see clause (e) below).

(12) The mode of summoning and holding meetings, the right of of voting, etc. (see clause (f) below).

(13) The manner of making, altering and abrogating by-laws (see sec. 11 and the wording of this clause above).

(14) The mode of appointment and removal of a Committee and of its officers (if any) and the powers and duties of the Committee and such officers (see clause (g) below).

(15) The mode of custody and of investment of the funds (see sec. 32).

(16) The mode of keeping the accounts (see clause (h) below).

(17) In credit societies, the conditions on which loans may be granted to members, including :—

(a) the rate of interest ;

(b) the maximum loan admissible to a member ;

(c) extensions and renewals ;

(d) recovery of loans ;

(e) the purposes for which the loans may be granted ; and

(f) security for re-payment (see clause (o)).

(18) The consequences of default in payment of any sum due by a member.

(19) The settlement of disputes (see clause (l)).

(20) Disposal of profits including (a) maximum rate of dividend, and (b) formation and use of a reserve fund (see clauses (p) and (r) below and sec. 33).

(21) The authorisation of an officer or of officers to sign documents on behalf of the society

To this list there should be added:—

(22) The inspection of the books of the society by every member having an interest in its funds, and

(23) The supply of copies of the by-laws and of the annual balance-sheet to members.

Burma and Bengal *add* : a society may make by-laws on......the imposition of fines and forfeitures on members. Madras simply insist that if a member is liable to fines, this shall be mentioned in the by-laws.[1]

Most of these matters will be discussed in the notes under the following clauses of this section. A few points may conveniently be noted here.

(1) The *name* must not be identical with that under which any other existing society is registered, or so nearly resembling that names as to be likely, in the opinion of the Registrar, to deceive the members of the public as to its nature or identity. A registered society may, by special resolution, change its name with the approval of the Registrar (it would be an amendment of a by-law, sec. 11) : a society must not be registered under a name likely to disguise its real character, e g., a society whose chief business is credit should not register as a stores society.

---

*1. Sec 66(2) of the Bihar Act prescribes the conditions under which a society may be prohibited from appointing a defaulting member of any society to its managing committee and the procedure to be followed when societies change the form or extent of their liability, and provide for the amalgamation and division of societies and prescribe the conditions of such amalgamation and division.

In England (Industrial and Provident Societies Act, Sec. 66), it is an offence for a society to use any abbreviation of its name on any stationery, bill-head, seal, etc. In India this applies to registered companies (sec. 73 of the Act). The power of deciding as to the name lies with the Registrar in the first instance, subject to an appeal against his refusal to register. The Court will not order registration if the opinion of the Registrar is genuine. The laws of New York State, British Columbia, etc., insist that the words "Co operative" and "Association" shall be included in the names of all Co-operative agricultural, dairy, and horticultural associations, while all productive societies shall affix or prefix such word or words to their names as will indicate that they are co-operative. The Acts of South Africa, Manitoba, etc., also insist on the word "co-operative" being part of the name.

(2) *Meetings*— the German Act requires by-laws dealing with regulations for summoning general meetings, authentication of resolutions and chairmanship of meetings, and whether in general meetings certain matters (e.g. expulsion of a member, adoption of new by-laws) must be decided not by a simple majority, but only by a larger majority of votes.

(3) In amending by-laws, a society may be asked to submit when necessary:—

(a) A copy of the existing rules marked so as to show where the alterations occur and what they are.

(b) Two copies of the amendment signed by officers of the society.

(c) A statement that the amendment was adopted by a majority at a general meeting of the society at which a certain minimum proportion of the members was present. The actual proportion required depends upon whether the liability of the members is limited or unlimited. In the former case, a smaller proportion may be

allowed without risk. In the Punjab, for instance, in the case of societies with limited liability, model by-laws or amendments previously approved by the Registrar may be adopted by a majority consisting of two-thirds of the members present at a general meeting of which due notice of the intention to discuss such model by-laws or amendments has been given. In other cases two-thirds of the members must be present. In some countries, the majority is prescribed by law.[1]

Bombay has issued rules:—

By-laws may be made, altered or abrogated by a resolution passed at a general meeting of the society; provided that—

(1) due notice of any proposal to make, alter or abrogate the by-laws is given in accordance with the by-laws;

(2) the resolution is passed by not less than two-thirds of the members present at the general meeting at which a quorum shall be present, or at an adjourned general meeting (at which if a quorum is not present within half an hour from the time appointed for holding the meeting, the members present shall form a quorum) and a copy of the resolution is forwarded to the Registrar within a period of three months from the date of the meeting. A copy of the existing by-law or by-laws, so marked as to show the alterations proposed to be made, and three copies of the proposed amendments signed by the officers of the society, shall be attached to the copy of the resolution; and

(3) the making, alteration or abrogation of the by-laws is approved and registered by the Registrar.

In Bengal, ordinarily half the members must be

1. The New York State law requires a three-fourths vote in the case of productive societies with capital stock, and two-thirds of all the members in the case of an agricultural dairy or horticultural society with no capital stock.

present, of whom two-thirds must vote for the amendment, but the Registrar may register an amendment passed by two-thirds of those present (even though less than one half of the whole) if he considers that the amendment is in the interest of the society and is likely to meet with the approval of the general body of members. Bihar has a similar rule, but the Registrar must record his reasons in writing for believing that it is impossible[1] for the society to secure the attendance of half the total number of members at a general meeting. Burma, in the case of non-agricultural societies, allows the by-laws to be amended by a vote of 75 per cent. of the members present, when one-quarter of the members, or 100 members whichever is less, are present. In the Uttar Pradesh the majority required is two-thirds, but the quorum is two-thirds in societies with unlimited liability and one-third of the total number of members where the liability is limited. In amending its by-laws a society must strictly observe its existing by-laws as to general meeting, majority required, previous notice, etc. It has been ruled that if any defect in the procedure renders the amended by-laws invalid, then the former by-laws must be considered in force. This might give rise to trouble if the amendment concerned the disposition of funds.

(4) *Consequences of default*—it must be remembered that if a society desires to impose any fines or forfeitures on members and to exact any penalty for non-payment of share instalments, etc., it must provide for this in its by-laws for no fines or other punishments can be inflicted except by virtue of a by-law.

In England, the provision for the inspection of books by every person having an interest in the funds (except the loan and deposit account of another member) is

1. Assam says "impracticable."

regarded as of such importance that failure to allow inspection is an offence (cf. sec. 16 of this Act).

(d) prescribed the conditions to be complied with by persons applying for admission or admitted as members, and provide for the election and admission of members, and the payment to be made and the interests to be acquired before the exercise of the right of membership ;[1]

It is an essential characteristic of a co-operative society, that it should be open to all fully qualified persons, therefore, a society must state clearly the terms of admission of members, entrance fees, minimum age, and other qualifications[2] (see clause (q) below). The rules or by-laws should also make clear the terms on which societies may become members.

The South Africa Co-operative Agricultural Societies Act prescribes that only persons carrying on farming operations in the colony shall be qualified to be members.

---

1. In the agricultural producers' co-operatives in China all working peasants, men and women, who have reached the age of 16 or other working people able to take part in the work of the co-operative (e.g. handicraft workers & book-keepers) and who voluntarily apply to join shall become members when their application is accepted by the general meeting. No restrictions should be placed on admittance of poor and middle peasants but during the first few years former landlords and rich peasants should not be admitted. Later on whenever three quarters of the working peasants of the area have joined, these ex-landlords and rich peasants may be admitted to membership after their cases are scrutinised by the general meeting. The aged, the weak, the orphans, and widows who can take part in subsidiary work should also be absorbed into the co-operative according to plan.

2. "It is best for the society to impose qualifications for membership since the resulting homogeneity assures harmonious action". Herrick, p. 462. According to a writer in "Better Business" (November, 1920, p. 9) in Serbia., the members of the society must be approved by the District Judge.

See sections 2 (c), 6, 12 and 14 and notes thereunder. As only members can hold shares, the Local Government can prescribe conditions relating to shareholders, e.g., that they must be over 18 years of age. Similarly as members have to be admitted, rules regarding admission may be framed to restrict transfer of shares.[1]

In the former Act, section 4 confined membership to persons above the age of 18 years but this is not reproduced in the present Act and the question of admitting minors is left to rules and by-laws. These must prescribe the minimum age of members. The Sixth Conference considered that minors should not necessarily be debarred from becoming members of societies. when they were heirs of deceased members (sec. 22); usually the by-laws exclude minors; their admission is not illegal but is objectionable as they cannot incur unlimited liability, and liability could not be enforced against them, even on winding up whether the society be limited or unlimited. Both Schulze-Delitzch and Raiffeisen excluded minors. They could not be held bound by any rule of unconditional adherence (see below) and generally they would be a source of weakness to the society. The general rule should be to exclude minors.

Similar objections apply to persons mentally disabled from entering into a contract and in some Provinces

---

1. "The European co-operative societies are very rigid in the matter of excluding all who are not really of them". They will not allow anybody to join with any interest except the interests of the society. Only persons can co-operate who have something to co-operate for that is common to all in the society. (American Commission, Observations, Part I, p. 20 Cf. also Powell, pp. 25-26).

The All India Rural Credit Survey Committee has recommended that there should be right of appeal against non-admission of members to the Registrar. "There is every justification for such right of appeal if we remember the need to ensure that the benefits of membership are not confined to a small coterie of the powerful, the influential and the propertied in each village".

persons of unsound mind are excluded. Assam, definitely prohibits from membership any one who is legally or mentally disabled or who is a bankrupt or against whom a conviction stands of a grave criminal offence. Any person found to be so disqualified shall be removed from the society.

It is a strict Raiffeisen rule that a member of a society with unlimited liability should not be admitted into a second similar society (see clause (m) below) and this is the rule in most Indian provinces, as well as in Ireland, Italy and elsewhere. Bengal has a rule that no person who has within two years ceased to be a member of a society with unlimited liability can join another without the special permission of the Registrar. This refinement is apparently based on section 23.

The society has power to impose any stipulation that does not involve a direct illegality: it may impose, for example, the profession of a particular religion. The society's power of rejecting candidates is absolute and the society need assign no reason for its action. It is necessary that a society have power to reject without explanation candidates who, with all the statutory qualifications, seem to them to have failings of temperament or intellect, which it would be something impossible, and always invidious to formulate.[1]

Unconditional adherence—Both the English Acts provide that the rules of (co-operative) societies shall bind the society and the members thereof, and all persons claiming through them respectively, to the same extent, as if each member had subscribed his name and affixed his seal thereto, and there were in the rules

1. Fay. Co-operation at Home and Abroad, 2nd Edn. p. 366.

contained a covenant on the part of himself, his heirs, executors and administrators to conform to the rules.[1]

In Germany, members must sign a declaration of unconditional adherence: if the Committee approve, this has to be registered and then he acquires membership. The Uttar Pradesh have a rule :—Every person, before being admitted to the membership of a society, shall sign a declaration that he will be bound by the existing by-laws of the society, and by any modification of, or addition to, such by-laws that may be legally effected during the period of his membership. A person, who is already a member by reason of his having joined the application for the registration of the society, shall be required, under pain of expulsion if he refused, to sign such declaration within one month of registration.

The model regulations appended to the South African Act, contain a clause regarding unconditional adherence and "any society shall have the power to impose fines on its members for any infringement of its regulations: the conditions and circumstances under which such fines may be imposed and the amount

---

1. Cf. Powell, p. 29: 'It is fundamental that the members of a farmer's co-operative organisation be held together by a contract or agreement, or by binding provision in the by-laws to be signed by every member.... ....The success of the co-operative movement depends, in the final analysis, on the steadfastness and co-operation of the members. Their support must be in the nature of a strong conviction that the co-operative principle as a business system is right and this faith and loyalty must be large enough to hold them together in the face of temporary adversity, or of the insidious efforts of the opponents of the co-operative method to disrupt the system.........As a business precaution, a contract or agreement between the association and its members is essential to the development of a stable, co-operative enterprise.........Unless otherwise provided, the agreement should give the association the exclusive right to handle the products of its members, or exclusively to supervise or execute or regulate such functions for the members as it is organised to perform......The membership agreement is the foundation stone on which the stability of a farmer's co-operative business association is reared.

thereof, shall be prescribed by the regulations of the society."[1]

Full disclosure of existing debts ought to be regarded as necessary preliminary to admission. The Government of India remarked that until a member has been freed from outside debts, a society is not performing its full functions but it is a counsel of perfection to expect that no one shall be admitted as a member unless and until his outside debts have been paid off. There are, of course, extreme cases in which a man is so indebted that there is no hope of his debts ever being cleared off and in such a case the proper course is to refuse him admission to the society.

It may, perhaps, be unnecessary to point out that the unlimited liability of such a man is of no value.

Ascertainment of debts of members[2]—The suggestion that societies should be given power to call upon creditors to state their claims against members within a specified period and that claims not filed within this period should be deemed to have been met (cf. Court of Wards Acts) has been debated for a long time. Modern opinion favours the view that a society should not make such a demand unless it is prepared to guarantee repayment and is not prepared to recommend that such power be given.

---

1. In the model by-laws of a co-operative processing society it has been provided that every producer member shall be bound to supply or sell his produce or such portion of it as may be required by the society for processing either directly or through a member society of which he is a member. He may be expelled if he deceives the society in any way or fails to carry out his obligation to it.

2. Under sec 44(1) of the Bengal Act when a member of a credit society applies for a loan or when a member applies for membership of such a society, the society may require any creditor named in the application to furnish a written statement of his claim. Similar provision has been made in sec 51 of the Orissa Co-operative Societies Act of 1951.

Women are not usually excluded by any rules or by-laws but the unlimited liability of a woman, especially a married woman or a widow under customary law, is of doubtful value and societies should be cautious in admitting them. There seems to be no objection in the case of a limited liability society with fully paid-up shares.[1]

It ought to be perfectly clear that in the principles of co-operation there is nothing whatever opposed to the admission of women as members. The objection arises from the general custom or law.

A Joint-Stock Company in Bengal is prohibited by rule from being a member of a registered society, without the permission of the Registrar.[2]

This should be general. It cannot have a proxy and cannot attend a general meeting.

Resort to money-lenders should not be prohibited, but it should be laid down that the Committee must be duly informed on every occasion when loans are taken from sources outside the society. A member who be-

---

1. The Hindu Succession Act of 1956 has given for the first time, to Hindu women a share in paternal property and absolute interest in such property will vest in them. The property of a Hindu who dies intestate will now be divided equally between his widow and his sons and daughters. In Mitakshara governed families the Act provides that on the death of a male member of the joint family his interest therein will develop on all heirs, male or female, who would have been entitled to succeed to his share if the property had been partitioned immediately before his death. Thus women will have no difficulty in joining societies with unlimited liability.

...

2. In Madras State temples, jails, hospitals, and hostels as well as schools have been allowed to join co-operative stores as members. "The membership of the Madras Handloom Weavers' Society is open not only to co-operatives but also to institutions interested in the handloom industry and firms engaged in the production, distribution or sale of raw materials required by handloom weavers" (Ragagopalan p. 16). U. P. Rule 35 provides that except with the previous sanction of the Registrar no joint stock company shall be a member of a co-operative society.

comes heavily indebted to money-lenders reduces the value of his unlimited liability to the society:

(e) regulate the manner in which funds may be raised by means of shares or debentures or otherwise.

Shares—The Act itself is silent on the subject whether shares are necessary or not in a credit society. In co-operative laws, it is usual to find regulations relating to the maximum and minimum amount of share-capital, the value of a share, when shares may be issued, limits on individual holdings, and restrictions on transfer. In most co-operative societies shares are not necessary but are useful as representing a paid-up part of the members' liability which inspires confidence in outsiders. The German Act now insists on shares but only requires one-tenth to be paid up, and as it fixes no minimum, many societies adopt a ten-anna share with one anna paid up. Raiffeisen regarded shares as unnecessary and as leading to a desire for high dividends: and experience has not found him at fault But where shares are paid in instalments spread over a period of years they serve to promote thrift. In such cases it may sometimes be advisable to maintain the encouragement to thrift by raising the value of the shares as the society grows older. In Belgium shares are compulsory, so also in Italy.

In the share system generally in the Punjab and other provinces the cumulative effect of small contributions to share-capital, spread over ten years, is remarkable and it disproves the opinions of Raiffeisen and Wolff, that these do not add apreciably to the security of the bank. In Burma, where most of the capital was provided by deposits of European non-members, the withdrawal of these deposits involved the movement in difficulties. The Russian law forbids societies, without

share-capital, to receive deposits from outside sources. The result was that the Raiffeisen societes practically all disappeared as soon as they were, by this means, deprived of their main source of outside capital. The members themselves were too poor to make deposits in sufficient volume for their operations. Consequently the peasantry were left without a credit system of their own.[1] Where the societies insisted on the formation of a share-capital, even when paid up in several annual instalments, it was found that they attracted only a minority of the agricultural population, and remained inaccessible to the great mass of the peasants.[2] Dupernex included the absence of any paid-up capital as one of the essential attributes of a village bank,[3] but some laws, as that of Belgium, require all co-operative societies to have a capital. In some cases, share-capital is essential where liability is limited, and not when it is unlimited.

A share is an interest in the society measured by a sum of money: it denotes both rights and liabilities. The right to a dividend is too readily recognised and in co-operative societies, this right should be rigorously restricted to a fair interest on capital. Its liability to serve as security for outsiders' claim is less readily appreciated. The share itself is moveable property belonging to the share-holder and transferable by him subject to the restrictions imposed by the Act, rules, and by-laws. The money value of the share, however,

1. Herrick, p. 397.

2. American Evidence: Russia, p. 237. It is rather difficult to believe this. A similar charge has been made by non-co-operators against the Punjab system, in spite of the fact that village menials freely join some societies. There must be something very wrong with a man who cannot save one rupee a year.

3. Peoples' Panks for Northern India, pp. 171-172.

belongs to the society. The price which the shareholder paid is not his. Obviously he cannot have both the share and its price. The sum paid up forms the society's capital, it forms a guarantee for depositors, as it is the immediate security for debts. It accordingly cannot be reduced without warning to the creditors. The value of shares cannot be reduced except by reconstruction involving provision for all existing debts (as in liquidation). Similarly sums paid up on shares should not be repaid while membership lasts except from a special Share Transfer Fund built up from undistributed profits. Where shares represent the sole liability (as in limited liability societies), they must not be withdrawable. They belong to the society and its creditors and no member has any right to reduce the security offered to the creditors. It would be well if the rules rendered all shares in limited liability societies non-withdrawable so long as there were any deposits or claims payable to non-members. In England, the Act prohibits withdrawable shares in limited liability credit societies.

One objection to share-capital in village banks used to be the tendency to impose on new members the condition of paying up all arrears with interest[1] This is now obviated by a by-law permitting new members to pay up shares in ten annual instalments from the date of admission.

Reserve—Capital may be built up from profits. The Committee on Co-operation (para 43) were of opinion that the prime object of every society should be to acquire a permanent capital of its own as speedily

1. Cf. Herrick, p. 350. "In Luzatti societies, the value of the share, and the size of the entrance fee for new members is determined each year and depends upon the amount of paid-in capital and reserves, the larger and older banks as a rule being the more expensive to join".

as possible. The best method is to arrange for a wide margin between the rates of interest at which societies borrow and lend, thus securing a substantial annual profit (apparently surplus was intended) to be carried to reserve. They saw no objection to arriving at an accumulation of owned capital by the route of a share system rather than by that of a reserve fund, provided that shares are not made an excuse for dividend hunting. They did not recommend shares exceeding Rs. 50 as these might deter the poorer people from joining.

Deposits:—Besides shares and surplus interest, a society may raise funds from deposits (or loans) from members and non-members[1]. Members have a right to deposit their surplus money at interest with the society, in so far as the means for the employment of the same exists: and a Local Government could not issue a rule prohibiting say, savings deposits, on the ground that the societies were competing with the Post Office Savings Banks. The Madras Act, however, (sec. 33) appears to give the Local Government power to make rules regulating the receipt of deposits from members. The House of Lords Committee thought there might be a risk in credit societies tempting depositors by offering interest in excess of what is given by the Savings Banks which would be more than the society could properly earn: but as Mr. Wolff, pointed out, as the societies found more lucrative employment for their money than the Post office, they could allow a little more. One member of the Committee seemed inclined to favour a rule limiting interest on deposits to the Post

1. Subject to section 30.

office rate.[1] The Raiffeisen model articles provide for this right which entails upon the society the duty of giving preference to deposits from members over those from non-members (see notes to Preamble-Promotion of Thrift, secs 4, 12 and 30). The Post Office Savings Banks are frequently mentioned in literature under this head. Mr. Strickland found that in Holland, a Royal Commission in 1906 recommended that the funds of these Banks be placed at the disposal of co-operative banks, but the surplus of deposits has removed the need; also that in Belgium, a law of 1894 made the funds of these Savings Banks available for rural co-operative credit societies, through the guarantee of a Central Bank. Mr. Rothfeld writes that under the new French law all kinds of agricultural co-operative societies whether credit or non-credit, can obtain long-term loans from Government funds. All credit societies can open current accounts provided they have fluid resources equal to the total of their current deposits.

Bombay has a rule: Agricultural credit societies shall not accept deposits which are not fixed for a period of at least two months, except savings deposits in such societies as have made in their by-laws provision for the encouragement of thrift among their members by the opening of savings accounts.

Members' deposit accounts should be kept confidential. The Committee on Co-operation write that as the bank's declared object is quite as much to

1. This competition for savings deposits is not confined to any one country. Agriculture needs capital which joint-stock banks are not well suited to provide. Sir Horace Plunkett and writers in other countries urge that the savings of agriculturists should be made available for agriculturists and not taken away to the towns. The argument is unanswerable but the government cannot dispense with the help of the Post Office Savings.

promote thrift as to facilitate credit, the main source of cash should be savings deposits (of members); these make the bank independent and also attract the interest of the depositors to the employment of their deposits. It should be the aim of primary societies to get as much in the way of local deposits as they can.[1] Deposits should be strictly confined to men with local interests. In order to tempt members to deposit it is justifiable to offer slightly higher rates on their deposits than on those of non-members, the maximum being the rate charged by the society on its loans (Reports, paras 48 and 49)[2]. Apparently no rule could be framed restricting deposits from members[3] and it is doubtful if a Local Government could frame a rule restricting deposits from non-members if the by-laws permitted this without restriction. But see the Madras Act (section 33) which confers such power on the Local Government (cf. notes to section 30 ante). Ordinarily, of course, the difficulty arising from the alternative offered by section

---

1. Local deposits possess a moral element which loans from a Central Bank do not have; see for instance Better Business, February, 1917:—'the members of a credit society are more likely to understand the binding nature of a loan, when it is to their own neighbours than to an impersonal institution.' The Madras Committee recommended that in primary societies all possible steps should be be taken to encourage local deposits in primary societies. Local deposits are governed by knowledge of the working of a society, and pressure to pay at inconvenient times is unlikely. Deposits from outside the locality should be discouraged.

2. The Committee on Rural Credit in Ireland found that security is much more influential than the rate of interest in attracting deposits. It is worth noting that the Irish Joint stock Banks, in agreeing to allow overdrafts at 4 per cent, stipulated that the local credit societies should not take deposits (cf. Pratt. Small Holders, p. 169). But the writers of Rural Reconstruction in Ireland say (p. 141):—It is to the credit of these banks that they soon realised that there was little or no competition threatened, and that the credit societies would actually help them by borrowing money in comparatively large sums and taking charge of the dangerous and tedious task of distributing it in very small loans.

3. But Assam has issued such a rule.

30 (rules or by-laws) would be met by the Registrar refusing to register a by-law that was not in conformity with the rules. Central Banks depend largely upon deposits from non-members. The present practice is embodied in the following rule of one province :—All Co-operative Central Banks and Urban Societies with limited liability which accept deposits from non-members shall make provision for fluid resources in such manner and according to such standard as may from time to time be prescribed by the Registrar in each individual case. In the Uttar Pradesh the scale of fluid resource is rigidly fixed by rule. Madras requires the standard to be prescribed by Government.[1]

In the Central Provinces the present practice is to disallow absolutely the acceptance of deposits from non-members, until the Registrar accords sanction.

Opinion seems to be unanimous that in the ordinary village credit society current accounts should be forbidden. In Urban banks they may be allowed under suitable safeguards. Some Central Banks accept current accounts: the Madras Committee found that they earn little or no profit on these transactions and run considerable risk in taking large sums at considerable rates of interest. Further, they proceed, the maintenance of current accounts requires a knowledge of the law and

---

1. Bengal Rule 69 lays down that a credit society, if so required by the Registrar, shall keep a minimum liquid cover against deposits held by it according to the following scale: (1) 25 per cent of the amount held in fixed deposits repayable within ensuing six months. (2) 33 per cent of the amount held in savings deposits. (3) 60 per cent of the amount held in current account.

In June 1952 the Reserve Bank of India laid down the following standard of fluid resources for Co-operative banks: (1) 40 per cent of deposits at call or on current account and cash credits and overdrafts sanctioned but not drawn (2) 25 per cent of savings deposits (3) 25 per cent of fixed deposits maturing within next 3 months (4) $12\frac{1}{2}$ per cent of fixed deposits maturing after next 3 months but within next 6 months.

practice relating to cheques, etc., which neither the Central Banks nor the department usually command.

Maximum liability—Cf. notes to sections 4 and 30. Most Provinces have a rule: Every society of unlimited liability shall from time to time fix in general meeting the maximum liability it may incur in loans from non-members. The maximum so fixed, shall be subject to the sanction of the Registrar, who may reduce it. ⟨Bombay adds :—For reasons to be communicated by him to the society in writing, and may prescribe a period, not being less than four months, within which the society shall comply with his orders⟩. No such society may receive any loan from non-members which will make its total liabilities to non-members exceed the limit sanctioned by the Registrar.[1]

1. Cf. Committee's Report, paras 52 and 59.

The 1926 Conference of Registrars refused to go further than this.[1]

Bombay has a rule :—No society with limited liability shall incur total liabilities exceeding eight times the total of its paid-up capital and its accumulated reserve fund. In Bengal and Madras the limit is ten times the sum of the share capital and the reserve fund for the time being. In Madras the Committee opposed any further increase. The Madras Provincial Bank, however may borrow up to twelve times the sum of its capital plus reserve.

---

1. Madras Rule 8 permits borrowings from non-members provided the amount borrowed from such persons and institutions together with the amount borrowed from members does not exceed the limit fixed by the Registrar for the society or for the class of society to which it belongs. Bengal allows a Land Mortgage Bank to incur liabilities by floating debentures, accepting deposits upto 20 times the value of paid up share capital and reserve fund.

Section 33 of the Bengal Act provides that the Government shall guarantee the principal and interest on debentures issued by a co-operative society which is permitted to issue debentures and these will be included among the securities enumerated in Sec 20 of the Indian Trusts Act. The Government shall appoint the Registrar or some other person to be the Trustee for the purpose of securing the fulfilment of the obligations of the society to the holders of the debentures. The assets of the society including any mortgages it holds shall vest in the Trustee and the holders of the debentures shall have a floating charge on all such assets. Similar provision for the issue of debentures has been made under the Madras Co-operative Land Mortgage Act of 1934.

The Madras Government have undertaken not only to guarantee principal and interest on debentures but also to provide interim accomodation to the Central L. M. Bank. In 1948 the Reserve Bank adopted a policy of contributing to the debentures to make up for the short fall in public subscriptions and in 1953 the Government of India agreed to purchase these debentures along with the Reserve Bank upto 20 per cent of the issue under the Joint Purchase scheme. This was discontinued in 1956. The Reserve Bank Act has recently been amended providing for the establishment of a National Agricultural Credit (Long Term Operations) Fund which can be utilised also for subscription to the debentures of and making loans to the Central Land Mortgage Banks. The sixth meeting of the Standing Advisory Committee on Agricultural Credit of the Reserve Bank recommended in 1957 that the short-term credit requirements of the Central Land Mortgage Banks should be met by the State Government or the State apex banks under Government guarantee.

Nowadays, wider experience and a better knowledge of the principles of sound credit justify elasticity in well managed banks. Where there is a low maximum dividend, the outside liabilities may be 10, or even 12 times the owned capital (paid-up share-capital plus reserves of all kinds).

Burma makes societies fix the maximum indebtedness to members as well as to non-members. In Madras the by-laws of all primary societies lay down that the maximum borrowing power may not exceed a certain figure, which is, as a rule, not more than one-eighth of the total assets in land and cattle of all its members.[1]

The Poona Conference (1916) resolved that the credit of a society should be assessed under two heads: (1) for current agricultural needs of its members, and (2) other purposes. The Burma Committee urged that the financing bank should be placed in a position to distinguish between the loan required for normal crop requirements of societies and loans for other purposes such as redemption of old debt and so be able to restrict its lending to the former purpose.

Under the former Act the Local Government could make rules providing for the rate at which interest may be paid on deposits. This provison has been omitted but a rule might still be framed requiring preference to be given to deposits from members or (in the case of a Central Bank) from member-societies.

1. In 1946 when the co-operative societies in Madras State were entrusted with the procurement and distribution of food-grains the Madras State Co-operative Bank and other Central banks were permitted to borrow upto twenty times of their paid up share capital and reserve fund. "A co-operative marketing society is allowed to borrow in excess of its maximum credit limit, provided the excess borrowings are covered by the pledge of agricultural produce placed in the effective custody of the financing bank. Likewise the Madras State Weavers' co-operative society is allowed to borrow in excess of its credit limit of ten times its owned capital for the purchase of yarn. The total sum so borrowed is restricted to the value of yarn and the finished goods in the custody of the society in its own godowns and emporia" (Rajagopalan p 86).

(f) provide for general meetings of the members and for the procedure at such meetings and the powers to be exercised by such meetings;

See notes to sections 12 and 13. Burma adds the resolutions to be passed at meeting.

The rights which belong to members with regard to the affairs of the society are exercised at the general meeting by resolution of the members present (German Act). There must be by-laws providing for the holding of meetings and as the by-laws must be made in good faith, they must provide for a meeting at least once a year. Unless the by-laws provide for sufficient meetings to enable the business of the society to be effectively carried on, the Registrar should not allow it to be registered. The business transacted should be only such as directly and immediately relates to its objects as declared in the registered rules lest any suspicion be aroused as to what takes place.

The Bombay Act requires an annual general meeting and provides for special general meetings on the requisition of a majority of the Committee, or one-fifth of the members or of the Registrar (see sections 12, 13 and Appendix).

The Madras Act (section 15) say: The Committee may at any time call a general meeting of the society and shall call such a meeting within one month after receipt of a requisition in writing from the Registrar or from a financing bank to which the society is indebted or from such number of members or proportion of the total number of members as may be specified in the by-laws of the society. If a general meeting is not called in accordance with such requisition, the Registrar shall have power to call a general meeting of the society himself. It is an offence if any person wilfully or with-

out any reasonable excuse disobeys any such requisition.

The rules or by-laws should—

(1) fix a quorum: one member cannot form a meeting and a general meeting must not be merely a Committee meeting under another name:

(2) require so many days' notice of the place, day and hour of the meeting and business to be conducted:

(3) prescribe a chairman and a rule for electing a temporary one in his absence:

(4) prescribe rules for voting, including the casting vote of the chairman (cf. notes to sec. 13);

(5) contain regulations for proxies of member-societies, e.g., requiring proxies to be deposited before the meeting ;

(6) prescribe the business to be placed before a general or a special meeting, for instance,[1]

(a) annual accounts and balance-sheet ;

(b) dividend ;

(c) report of Committee and auditors ;

(d) election of Committee ;

(e) total amount of loans and deposits which may be accepted ;

(f) limits to be observed in the granting of loans to members :

(7) arrange for adjournments, if quorum not present, and subsequent meeting to be held whether quorum be present or not:

1. Bengal Rules 16 to 26 lay down detailed procedure for the holding of general meetings. In the case of large societies with a membership of 3,000 or more the meeting may be attended by representatives of different areas. One delegate shall be elected for every fifty members. Each delegate shall have one vote.

(8) provide for a record of all proceedings and their signature by the Chairman :

(9) provide for the summoning of general meetings on the requisition of a prescribed number of members.

At present no Province has issued complete rules but has left these matters to be dealt with in the by-laws. It is usually prescribed that the balance-sheet should be laid before a general meeting once a year, and that the Registrar or any person authorised by him may at any time summon a special general meeting, and specify what matters shall be discussed at it. Such a meeting is, by rule, to have all the powers of a meeting called according to the by-laws. The Uttar Pradesh has a rule: —

"Provided that if the requisite quorum cannot be obtained at a meeting of a limited liability society, the Registrar may direct the Secretary to call another meeting and at the same time to inform the members in writing that if a quorum of one-third of the total number of members is not present another meeting will be called at which the required quorum will be reduced to one-fifth."

In Italy the law requires that members shall personally attend whenever possible[1] and it is generally provided by the articles of societies that members failing to attend a general meeting without reasonable excuse are liable to be fined[2] and in some English and Indian societies there is a similar rule. Attendance may be stimulated by forbidding proxies and by requiring a fairly high proportion of members to be present before a dividend can be declared.

By an amendment of the German Co-operative Law in 1922, all societies with 10,000 members must, and societies with 3,000 members may, hold their general

1. Monographs II, p. 130.
2. Nicholson.

meetings by convoking representatives of areas or sections, instead of individual members in person.[1]

(g) provide for the appointment, suspension, and removal of the member of the Committee and other officers, and for the procedure at meetings of the Committee, and for the powers to be exercised and the duties to be performed by the Committee and other officers ;

The Act does not provide for a Managing Committee[2] so that unless Local Governments issue a rule, one is not legally necessary. However, the existence of one is presumed (cf. definition sec. 2 (b) and the reference in sec. 22). In societies which are not incorporated (sec. 18) there must be trustees (as in Friendly Societies Act) or a Committee (as in German Act) to represent the society legally. In Germany, the society obtains rights and accepts obligations through all legal transactions completed in its name by the Committee. In Germany, also there must be a Board of Supervision, whose consent is necessary for any loan granted to a member of the Committee of Management.

Professor Marshall writes that while control by a Committee chosen from amongst the members themselves is undoubtedly a great attraction, possesses considerable educational merit and affords a valuable practi-

---

1. Cf. Dr Theodor Cassan : Consumers' Co-operative Movement in Germany. Bengal Rules 25 to 27 provide for general meeting by delegates.

2. Most other Acts do. Cf. New York State law which provides that, in productive societies, there shall be a board of not less than five directors. The directors shall be elected by and from the shareholders.........The officers shall be a president, one or more vice-presidents, a secretary and a treasurer, who shall be elected annually by the directors, and each of whom must be a director. In agricultural societies the secretary and treasurer may be non-members.

cal training, it imposes a limit to the progress of the movement into the more intricate realms of business enterprise. An army commanded by a Committee has seldom given a good account of itself and many decisions in the course of business require the prompt action of an expert. It too often happens that a Committee man vacates office to make way for another, in accordance with democratic principle, just when he is beginning to get an expert grasp of its work.[1] The idea of central banks being controlled by Committees representing borrowing societies is disliked by commercial bankers. The Madras Committee recommended caution in the elimination of individual shareholders and that members should be co-opted to the Committee who have special knowledge which may prove useful: such co-opted members would have no votes. Under the new Act the Madras Government may frame rules prescribing in the case of a financing bank (i) the proportion of individual members to society members in the constitution of its general body or of its Committee, and (ii) the maximum number of members of its Committee.

The Committee must consist of not less than two members: where a registered society is a member, it may elect a member to the Committee of the larger society.

The Committee on Co-operation did not advocate supervisory Committees as a suitable feature in the vast majority of agricultural societies. In urban areas where the personnel with the requisite qualification is more freely available, they considered such Committees might be more successful. Undoubtedly such supervisory Boards are advisable if men can be obtained for them. In Germany, the maintenance of this Board at full strength is considered so important that Directors and

1. Marshall, Industry and Trade, Bk. II, Ch. VII..

members of the Committee may be fined for default. The main point, however, as the Committee on Co-operation point out, is that the Managing Committee should work as a Committee, that it should do its work regularly and as a whole and not hand over its responsibilities to one or two active men. It is also important that it should not be placed beyond the control of the general meeting.[1]

Election of a Committee is usually by nomination and open vote in general meetings and the Bengal rules prescribe this; but the English Conference in 1903 advocated the use of the ballot as the system of open

---

1. In many countries the annual general meeting elects in addition to the committee of management special supervisory bodies e.g. a Committee of Auditors for the inspection of the accounts of the society; a committee of Supervision which will satisfy itself that the decisions of the general meeting are being carried out. Both these bodies are independent of the committee of management. The features which typify the structure and procedures of this administrative organisation are "first the unlimited powers are vested in the general meeting and secondly the precise and balanced division of responsibilities between the executive bodies and the controlling bodies—a division which leaves the executive a wide freedom of action subject to a vigilant control which gives aid or registers disapproval, but without undue interference"

(I.L.O.; The Co-operative Movement and Present-Day Problems, Studies and Reports, series H. no 5 p 165)

The model by-laws of a large sized primary credit society provide that the committee of management may set up in each village a supervisory committee consisting of five members including the director representing the village on the committee of management for (a) recommending loan applications from members (b) acting as a supervisory body in the village with a view to ensure the proper utilisation of the loan and repayment in time (c) advising the members on improved agricultural practices and assisting in the timely despatch of produce to the marketing society.

The by-laws of an industrial productive co-operative society provide that the general body shall elect a supervisory committee whose duty will be to examine all books of accounts and verify cash and other property and submit at the end of the year a report to the general body on the financial position and working of the society with suggestions for improvement.

voting was not calculated to promote wide selection, representative appointments and free choice (Webb).

It is a mistake to assume that in an association formed on a democratic basis, all members will take an equal share in the management and that therefore the personnel of the Committee should be frequently changed. All members should have equal opportunity to serve, and the members of the Committee should regularly come before a general meeting for re-election or replacement. Co-operation depends for its success on leadership and it would hardly be an exaggeration to say that every outstanding success has been due to some man of striking character.[1] The Committee should, of course, be chosen from amongst the members[2] even if this involves admitting to membership some who have not the same interests as the general body. In Ireland, for instance, it is usual to try to get some persons of more education than the average farmers and generally speaking, the Protestant or the Catholic clergymen, or the doctor, or national school teacher are members of the Committee.[3] Mr. Wolff does not favour a general election of the whole Committee at

---

1. Every society must look to the more energetic, reliable and experienced of its members to play a leading part in conducting its affairs. The provision of one man one vote, so far from hindering those of outstanding character from coming to the top, is likely to help them to do so, for it removes the likelihood of directors and officers being elected by a favoured few for interested motives. It is probable that in a good Co-operative Society, the president and committee are almost always those who have commended themselves to their fellow-members by their outstanding character ....Practically all conspicuous successes are to be associated with the work of one or two men (Smith Gordon, Co-operation for Farmers, p. 17).

2. In Italy, as the law aims at facilitating the exchange of mutual services between the society and its members, it requires that the officials be selected from among the members (Monographs, II. p. 129) In India the by-laws provide for this.

3. Cf. evidence of G. Russell before House of Lords Committee.

the same time, but prefers partial renewals of the members so as to obviate the possible prospect of an entirely new set coming in.[1]

Disqualifications are usually the following :—

(1) being under the age of 21 years ; or

(2) holding office or place of profit under the society ; or

(3) holding less than a specified number of shares or having been a member less than a specified time ; or

(4) having relatives employed by the society ; or

(5) being adjudged insolvent ; or

(6) being found lunatic or becoming of unsound mind ; or

(7) being concerned or participating in the profits of any contract with the society ; or

---

1. In Madras the proportion of the individual members to society members on the Committee of a financing bank, and the maximum strength of the Committee shall be fixed by the Registrar. An individual member shall not be eligible for appointment as a member of the Committee unless he holds such number of shares in such bank or has invested in such bank in fixed deposits such minimum amount as may be fixed by Registrar (Rule 26).

The by-laws of the re-organised Central Banks in Bihar (1957) lay down that the Board of Directors shall consist of 11 persons besides an ex-officio Chairman. Of these two shall be nominated by the Registrar, two shall be representatives of individual members and seven shall be representatives of affiliated societies. An individual member shall not be eligible for election if he does not hold at least two fully paid up shares and if an order of surcharge has been passed against him, provided that he may stand for election, after two years of passing of the order of surcharge, if he has paid up the full amount of surcharge. The Subdivisional Officer or the Collector shall be ex-officio Chairman but a Director may with the previous approval of the Registrar be elected as Chairman.

(8) being punished with imprisonment for a term exceeding six months; or[1]

(9) (in stores societies) failing to purchase a specified amount of goods from the society.

The South African Act says, a director shall vacate his office if he absents himself from four consecutive meetings of the board without its leave.

Illiteracy cannot be a disqualification under present circumstances although complaint has been made that "not infrequently illiterates are chosen as Committee men, a thing which should be absolutely prohibited."

If a member carries on any business similar to that of the society, he is usually held to be disqualified; for instance, a man who does money-lending for his own benefit, should never be made a member of the Committee of a credit society.[2] In Bengal, in industrial societies composed solely of artisans or workmen, a member in receipt of a salary from the society may, with the approval of the Registrar, be a member of the Managing Committee.

Removal of a member of the Committee may be

---

1. Madras Rule 27 lays down further disqualifications:— (a) a member who has been sentenced for any offence other than offence of a political nature or an offence involving moral delinquency provided that this disqualification shall not apply where more than five years have elapsed from the date of expiration of such sentence (b) who has been expelled from a society provided that this disqualification shall not apply where more than two years have elapsed from the date of such expulsion.

Under Bengal Rule 31 no director who has held office for three or more consecutive years shall be eligible for re-election for two years from the date of his retirement without the previous permission of the Registrar.

2. The model by-laws of a primary marketing co-operative society provide that merchants, traders and commission agents, who are engaged in business in agricultural produce and have dealings with the society may also be admitted as nominal members and shall be allotted "C" class shares, with no right to vote or participate in the management or share in the dividend or bonus.

effected for any of the reasons disqualifying him from election and also—

(1) for becoming of unsound mind ;

(2) for being adjudged insolvent ;

(3) for being imprisoned ; and

(4) for failing to attend a sufficient number of meetings.

The Madras Committee considered that every possible step should be taken to protect members of primary societies and others from losses caused by misfeasance, and that, in all cases where proof is forthcoming, proper punishment should be inflicted. It would seem to follow from this that a member of the Committee should be removeable for embezzlement even if he is not convicted. The new Madras Act (section 49) empowers the Registrar under certain conditions to order a member of the Committee or officer to repay or restore to the society any money or property misappropriated or fraudulently retained or embezzled.

Powers of Committee consist usually in the exercise of all powers of the society except those reserved for a general meeting subject to any regulations or restrictions duly laid down by the society and its by-laws. The Committee derives its power from the society and is bound by the Act, rules and by-laws. It cannot delegate powers to anyone unless specially authorised to do so by general meeting or by-laws. It cannot exercise any powers except those delegated to it and only to the extent authorised.

Duties of the Committee—

(1) To observe in all their transactions the Acts, rules and by-laws:

(2) to maintain true accounts of money received and expended ; and

(3) accounts of the assets and liabilities of the society ;

(4) to facilitate the inspection of books by those authorised to see them (cf. secs. 16,17, (3)),

(5) to prepare and present to the general meeting a profit and loss account annually,

(6) in credit societies, to watch that loans are applied to the purpose approved,

(7) to maintain a register of members up to date,

(8) to call a general meeting on the demand of the number of members prescribed for this purpose in the by-laws or rules.[1]

The Committee is bound to observe the limitations imposed by the by-laws or by the resolutions of the general meeting as to the extent of their authority to represent the society. As regards third parties the society appears to be bound by the acts of the Committee, but it may sue them for loss (German Act). Thus in Germany members of the Committee may be fined for carrying on business outside the objects of the

1. In Austria a heavy penalty is imposed for failure to convene such a meeting. In Madras now it is offence to omit to call a general meeting when legally required to do so.

society.[1] In France the members of the Committee are personally responsible in case of breach of the provisions of the law or of the by-laws for any damage resulting from such breach (Nicholson). The Committee must exercise the prudence of ordinary men of business, those who neglect their obligations are liable to the

---

1. Sec. 40 of the Bihar Act provides for surcharge against any person who has taken part in the organisation or management of the society or any past or present officer of the society for (a) having made payment contrary to law or to the rules or by-laws of the society or against the directions of the financing bank (b) culpable negligence or misconduct causing loss to the society (c) failing to bring into account any sum which ought to have been brought into account (d) having misappropriated or fraudulently retained any property of the society or of the financing bank.

The Registrar may enquire into the conduct of such person or officer and after giving him a hearing pass orders requiring him to contribute such sum to the assets of the society by way of compensation but before this order is passed reasonable time should be given to the person to recover the amount from the payee and credit it to the funds of the society. This section shall apply notwithstanding that such person may have acquired criminal liability. An appeal shall lie to the State Government within three months from the date of the communication of the order.

This section is applicable in respect of any act or omission occurring within four years preceding the date of order. Where the audit of societies is in arrears there is unusual delay in detection and this section becomes inoperative.

In Madras (sec. 49) appeal against the order of the Registrar may lie to the District Civil Court and the sum ordered to be repaid to the society is recoverable by the Collector in the same manner as arrears of land revenue. Sec. 50 authorises the Registrar to order the conditional attachment of the property of the offending member if there is an apprehension that he is about to dispose of the property. Under Madhya Pradesh Act (sec. 42 D2) no order passed by the Registrar under this section shall be called in question in any Civil Court.

Sec. 128 of the Bengal Act has a novel provision under which the Registrar may direct any member to pay to the assets of the society by way of penalty such sum as he thinks fit in cases where the member contravenes the provisions of the Act or by-laws by sitting or voting as a member of the Managing Committee or exercising the rights of a member of a co-operative society when such member was not entitled to do so, or by employing a loan for a purpose different from that for which it was granted.

society for any loss thereby caused.[1] In accordance with general company law members of the Committee in India would be liable for any loss sustained by the society by any act contrary to the law, rules and by-laws (e.g., making a loan to a non-member contrary to sec. 29), and apparently the society could take proceedings by arbitration against the Committee to recover the loss. The Madras Committee recommended that the members of the Committee should be made personally responsible for the repayment of loans which by their negligence had become time-barred. The Foreign Experts of the Banking Enquiry Committee recommended that it should be prescribed in the Act and by-laws that the members of the Managing Committee and Supervising Board are jointly and severally responsible for credits granted without requisite care. For the above reasons the duties of the society's officers should be clearly specified so that offences can be brought home (see Appendix[2]).

In Bengal there is a rule that the appointment of a salaried officer in any society shall be subject to such

1. In Oregon, U.S.A., the directors must swear to administer the business of the society faithfully.

2. In the model articles for a company given in the first schedule of the Companies Act, it is clearly prescribed that the business of the company shall be managed by the directors who shall duly comply with the Act.

conditions as to qualifications and the furnishing of security as may be prescribed by the Registrar.[1]

In Madras (section 43) power has been given to the Registrar to dissolve a Committee that is not functioning properly, and to appoint a suitable person or persons to manage the affairs of the society for a period not exceeding two years.

(h) prescribe the accounts and books to be kept by a society and provide for the audit of such accounts and the charges, if any, to be made for such audit, and for the periodical publication of a balance-sheet showing the assets and liabilities of a society;

Of the many great services rendered to the country by the co-operative movement the introduction and popularisation of a good system of accounts is, by no means, the least. The mutual confidence of co-operators should not be weakened by a loose system of accounts. Business-like forms should be used at all times. Too much importance cannot be attached to this work.

1. Under sec. 24 of the Bengal Act on the application of a co-operative society Government may depute a Government servant to manage the affairs of the society. This Officer, to be designated the Executive Officer, will be under the general control of the Managing Committee and shall have power of control over the staff of the society and shall institute, defend, and conduct legal proceedings and enter into compromise or arbitration with creditors and debtors of the society. He will have full powers of management and in case of difference of opinion with the Managing Committee he may refer the matter to the Registrar for his opinion. The Government may withdraw this officer after giving three months' notice to the society and the society may at any time apply for the withdrawal of the officer. No suit or legal proceedings shall lie against him in respect of anything done by him in good faith in accordance with the powers conferred on him.

The by-laws of the Bihar State Co-operative Bank provide for the deputation of a Government servant who is designated as the Managing Director.

A register of members and of shares may be prescribed under clause (k) below.

Under this clause the minimum requirements in the case of a credit society seem to be—

(1) cash book;
(2) ledger account for each member;
(3) register showing when repayments of loans are due;
(4) register of deposits;
(5) minute book: or, as Uttar Pradesh rules prescribe in more detail, a book of minutes of all resolutions and proceedings of general and special meetings of the society and of meetings of the Committee. Bombay requires two minute books, one for general meetings and one for Committee meetings.

Some Provinces add:—

(6) share transfer register;
(7) interest account;
(8) expenses account;
(9) bank account;
(10) receipt book with forms in duplicate;
(11) liability register showing the indebtedness of each member to the society whether on account of loans taken directly by him or on account of loans for which he stands surety;
(12) (in the case of unlimited liability societies) a statement showing the assets and liabilities of each individual member at the date of admission as well as on the last day of each co-operative year.

The books, if well kept, will in time supply the best evidence of each member's work as a borrower. The deposit and loans of each member will indicate fairly clearly whether he is progressing towards prosperity or insolvency. Everyone will agree with the recommend-

ation of the Madras Committee that the accounts should be as simple as is compatible with clarity. As the Burma Committee explained : It is one of the essentials of a sound credit society that the members should be able to understand the accounts, and in order that this may be a practicable ideal amongst a population not possessed of a high standard of literacy, it is absolutely necessary that the accounts should be of the simplest possible character consistent with clearness.

Audit—Under the former Act no charge could be made in respect of any audit made by the Registrar. In the Punjab the model by-laws provide that the society shall pay such fee for audit as the Punjab Co-operative Union may from time to time prescribe. The need for a Government rule disappears when a non-official body takes over the work. Bengal requires simply that every registered society shall pay the audit-fee prescribed by Government. Uttar Pradesh has rather elaborate rules. Every society pays an audit-fee calculated in the case of a Central Bank at six annas per hundred rupees of working capital subject to a maximum of Rs. 200, and in other cases, at three and a half annas per hundred rupees subject to a maximum of Rs. 100. The fees are credited into the local Treasuries and the Registrar employs the staff. In Assam the scale is six annas per hundred rupees in the case of primary societies and three annas in the case of a Central Bank. Bombay used to limit the charge to societies of limited liability with a working capital exceeding Rs. 50,000. The latest rules are that societies (not necessarily limited) with working capital exceeding Rs. 50,000 may be required to pay the whole cost of their audit, while other societies may be subjected to a levy of an audit rate not exceeding five-eighth of one per cent on the working capital. The proceeds go towards the cost of the audit staff. In Bihar audit is

carried on by the Government staff and fees are payable to the Government.[1]

Under Madras Rule 11 every society shall pay to the Government audit charges in accordance with the scale fixed by Registrar. The following societies have been exempted :—primary credit society, thrift and loan society, society for scheduled castes, central bank with capital below Rs. 20,000, building society or primary land mortgage bank which has not completed three years, weavers society which has not completed six years etc., and all agricultural societies with unlimited liability.

Fees are payable not on the basis of working capital as in other States but on the basis of the actual time taken for the audit. Each auditor is expected to work for at least 6 hours per day.

Central banks—at Rs. 7 per day.

Urban banks with working capital of Rs. 1 lakh and over—at Rs. 7 per day.

Societies (other than Central and Urban banks) with working capital or total business of Rs. 1 lakh and over.—at Rs. 7 per day.

Urban banks with working capital below Rs. 1 lakh and other societies liable to pay fees—at Rs. 5/4 per day.

---

1. In Bengal the audit fee is calculated at the following rates:—(a) 10 annas for every Rs. 100/- of working capital subject to a maximum of Rs. 140/- in the case of a primary society with unlimited liability, (b) 10 annas for every Rs. 100/- upto Rs. 50,000/- subject to a maximum of Rs. 250/- thereafter Rs. 25/- for every Rs. 25,000/- upto Rs. 1 lakh and thereafter Rs. 50/- for every Rs. 50,000/- subject to an ultimate maximum of Rs. 1,000 in the case of a primary society with limited liability (c) 5 annas for every Rs. 100/- upto Rs. 1·5 lakhs subject to a maximum of Rs. 350/- and thereafter Rs. 50/- for every Rs. 50,000/- subject to an ultimate maximum of Rs. 1,000 in the case of a Provincial or Central society.

Publication of Balance-sheet—A balance-sheet may be defined as a classified summary of the balances remaining in a set of books after those relating to profit and loss have been collected into one account, and including the balance of that account, so arranged as to show the assets and debit-balances on one side and the liability and credit-balances on the other. It should set out the true position of the business in such a manner as may be easily understood by men of business intelligence.[1] The laws of England and India agree in requiring periodical publication of balance-sheets by all banking and insurance companies and provident or benefit societies. This has usually to be done twice a year and the balance-sheet must be kept displayed. Every member and every creditor is entitled to a copy (cf. Indian Companies Act, sec. 223). The Industrial and Provident Societies Act requires every registered society engaged in banking to make out twice a year, and keep conspicuously hung up, a statement of capital, assets and liabilities, and the Friendly Societies Act requires a copy of the last annual balance-sheet to be displayed, together with any special report of the auditors. Every member and every person interested in its funds is entitled on application to receive gratuitously a copy of the last annual return or an audited balance-sheet containing the same particulars. In Germany also the annual balance-sheet must be published.

The usual rule is:—The balance-sheet of each registered society shall be laid before a general meeting of the society once a year. But Bombay requires every society to publish its annual balance-sheet. It also insists that the balance-sheet shall be open to the inspection of any member during office hours. Madras

1. Spicer and Pegler. Practical Auditing, 3rd Edn., p. 403

says the society shall publish such of the prescribed statements as the Registrar may direct in the manner prescribed by him.

Some provinces have a rule:—

No society of which any member is a registered society shall take into consideration any balance-sheet at its annual general meeting or make any distribution of its profits by way of dividend or bonus or otherwise among its members, unless and until the balance-sheet (for the period during which such profits have accrued) shall have been certified to be a true and correct statement of the position of the said society by the Registrar or some person authorised by him in that behalf.

(i) prescribe the returns to be submitted by a society to the Registrar and provide for the persons by whom and the form in which such returns shall be submitted;

The minimum returns appear to be—

(1) account of income and expenditure:

(2) profit and loss account:

(3) balance-sheet.

Some Provinces merely rule that the societies shall submit such returns as the Registrar may by general or special order prescribe.

The returns should, as far as possible, be submitted by the societies themselves so that they may serve as an object lessons in accountancy. In Madras, Government has taken power to frame rules for the levy of the expenses of preparing any return which a society may fail to submit.

The returns should be audited once, and where the auditor is not appointed by the Registrar his name should be given.

(j) provide for the persons by whom and the form in which copies of entries in books of societies may be certified;

Burma and Madras add:—and for the charges to be levied for such copies.

Bankers Books Evidence Act, section 2 (8) runs:—

"Certified copy" means a copy of any entry in the books of a bank, together with a certificate written at the foot of such copy that it is a true copy of such entry, that such entry is contained in one of the ordinary books of the bank and was made in the usual and ordinary course of business, and that such book is still in the custody of the bank, such certificate being dated and subscribed by the principal accountant or manager of the bank with his name and official title.

Most provinces have issued a rule embodying the whole or the greater part of this.

The costs of anything done or to be done under an order of a court or judge shall be in his discretion but if costs are awarded to a bank, the bank may recover as if it were a party. (N.B.--The bank should always apply for costs if ordered to produce books). The certificate must be dated and signed by the secretary of the society or other officer approved by the Registrar (in Punjab, Bihar and Orissa, etc.). Madras prescribes that the copies shall be made by the President or the Secretary and shall be certified by not less than three members of its managing body, including such President or Secretary and shall bear the society's seal The Central Provinces and Uttar Pradesh require a second signature of an officer or member of the Committee, Bombay allows any officer to certify: Burma limits this to the Chairman.

(k) provide for the formation and maintenance of a register of members and,

where the liability of the members is limited by shares, of a register of shares;

See section 25 and notes thereunder.

The register of members is essential and its maintenance should be compulsory. Where there are no shares and therefore no share-list, it is the only record. The Bengal rule is simple: The Managing Committee shall keep such books and registers as may be prescribed by the Registrar and in particular shall make and maintain correctly up to date a register of members. The Punjab is more specific: Every society shall maintain a register of members showing :—

(a) the name, address and occupation of each member, and a statement of the shares held by him:

(b) the date on which each member's name was entered in the register:

(c) the date on which any person ceased to be a member:

(d) the nominee, if any.

(l) provide that any dispute touching the business of a society between members or past members of the society or persons claiming through a member or past member or persons so claiming and the Committee or any officer shall be referred to the Registrar for decision or, if he so directs, to arbitration, and prescribe the mode of appointing an arbitrator or arbitrators and the procedure to be followed in proceedings before the Registrar or such arbitrator or arbitrators, and the enforcement of the decisions of the Registrar or the awards of arbitrators;

Arbitration means the hearing and determining of a cause between parties in controversy by a person or persons chosen or agreed to by the parties. The determination of arbitrators is called an *award* (Century Dictionary).

At first, Government refused to allow the societies a special summary procedure for the recovery of their debts in place of the slow and expensive methods of the courts. It would, it was thought, be mistaken kindness to confer upon societies arbitrary powers of recovery, and if in the absence of such powers a society cannot by means of the joint-security given and its own moral authority, collect its debts, the failure is due to a careless selection of members in the first instance or to lax management. If individual societies could employ special methods in dealing with their members, they would be encouraged to become careless in administration and to neglect the vital principle that admission should be refused to those who cannot be relied upon to fulfil their obligations.[1].

But some Local Governments have framed rules providing for the enforcement of a Registrar's decision or an arbitrator's award as a decree of a Civil Court. Some Local Governments have gone further and have issued rules, under this clause, rendering all sums, recoverable under the Registrar's decision or an award, liable to be collected as an arrear of land-revenue. Burma proposed to incorporate this in the new Act but the proposal was rejected. There is a general consensus of opinion that an award should be executed as a decree, and, if the existing Act does not permit of a rule to this effect, it should be amended so as to permit of such a rule being framed.

1. Government of India Resolution: but this and the corresponding clause of the former Act were inserted with the intention of avoiding litigation and the trouble, expense and delay attending it.

The clause follows very much the English law. The Friendly Societies Act directs that disputes shall be decided in the manner directed by the rules of the society and the decision so given shall be binding and conclusive on all parties without appeal and shall not be removeable into any Court of law or restrainable by injunction: it allows the parties the alternative of referring to the Registrar. The Madras Act includes the provision of compulsory arbitration in the substantive part of the Act and does not leave it to rules (section 51—cf. Appendix).

The English Courts have taken a very sensible view of these arbitration proceedings as the following quotation from a ruling will show:—The Legislature intended carefully to provide that these societies should not be dragged before Courts of Law or Equity, if it could possibly be avoided, and has taken care to enact that the whole discussion of their affairs shall be disposed of in a cheap and summary manner by the decision of an arbitrator (or justices)...the power of the justice or the arbitrator is complete and is not subject to revision by any Court of Law or Equity. That is the primary matter to which attention must be drawn and it is necessary to be extremely careful that the jurisdiction of this Court shall not be set up to control the arbitrators so selected except upon a very clear and distinct case being made out of their abuse of their office.

A reference to the Indian case-law on arbitration shows that there are so many pitfalls for an arbitrator that a discontented party can always point to some defect to secure interference from the Court.

Although the Committee of Management are not proper parties to determine disputes, there is nothing objectionable in requiring disputes to be in the first instance considered by the Committee with a view to terms being arranged.

In England compulsory arbitration was for long

considered impracticable but it was adopted after 1867 and is now common.

In England, and presumably also in India, all moneys payable by a member to the society are deemed to be a debt due from such member and are recoverable as such. This would include calls on shares. In Trade Unions subscriptions generally cannot be sued for in court.

What is a dispute? Ordinarily the word "dispute" includes all matters which could form the subject of civil litigation: and so presumably would include a debt due to a society, payment of which is not made on demand, whether the fact of the sum being due is questioned or not. Most Local Governments seem to have adopted this view and Bombay (section 54) specifically provides that "A dispute shall include claims by a society for debts or demands due to it from a member or past member or the heirs or assets of a past member whether such debts or demands be admitted or not" and Madras (section 51 (1) Explanation) makes similar provision. But it would appear that in Bengal and Burma a debtor has only to admit it, and it ceases to be a dispute and the arbitrator cannot deal with it. Opinion seems to be unanimous that if a debt is overdue and the defaulter fails to pay or to show adequate cause for non-payment, he is liable to be proceeded against under the rule of compulsory arbitration, and the sum awarded should be recoverable as a decree. A dispute relating to a debt is none the less a dispute whether the amount is or is not admitted by the borrower when a demand of payment is made and is either refused or not complied with.

Generally disputes, other than those relating to money due, should be referred to the general meeting whose decision should be final, but in the case, for instance, of an expelled member claiming to be re-

admitted the matter would more suitably be settled by arbitration.[1]

The Madras Law Journal, March 1923, pp. 382-384 (quoted in Madras Bulletin of Co-operation, April-May, 1923), gives a decision by the High Court of Madras wherefrom it appears that—

(1) the words "touching the business of the society" are not confined to disputes regarding the internal management of the affairs of the society or disputes in regard to the principles which would regulate the conduct of business;

(2) a dispute between a member who happens to be an officer of a society and the society in regard to sums of money entrusted to the former for purchase of certain articles is within this section;

(3) a dispute between a member who happens to be an officer of a society on the one hand and the Committee or an officer on the other falls within the words of this section.

The Allahabad High Court have ruled that any dispute about the election of the officers of a Co-operative Society must be referred to the Registrar. No suit is, therefore, maintainable in a Civil Court for declaration that the defendants' election as Directors of a society is not legal.[2] It was held that the word "business" was not intended to be used in the restricted

---

1. See sub-section (8) of section 68, Friendly Societies Act—the expression 'dispute' includes any dispute arising on the question whether a member or person aggrieved is entitled to be or to continue to be a member or to be reinstated as a member.

2. All. Law Journal, Vol. XXIII, 1925, p. 129.

sense of money business. The election of its officers is certainly a part of the business of the society.[1]

In Civil Appellate Side, Case No. 914 of 1922, *The Zemindar Bank, Sherpur Kalan v. Suba*, decided 28th November, 1922, the High Court of Lahore remarked on these rules:—"The principle of law as enunciated in various authorities is that statutes imposing restrictions upon the subjects' right of suit should be strictly construed and such restrictions should not be extended beyond what the words used actually cover. In the present case, however, it appears to us that the words used do clearly contain a necessary implication depriving the subject of his common law right of action and provide a special and prompt procedure for cases in which, having regard to the class of people affected, a speedy decision as to their dispute is essential. It will be observed that the object of the Act is to encourage thrift, self-help and co-operation among agriculturists, artisans and persons of limited means, and it will, in our opinion, be impossible to attain these objects if these people for the settlement of their disputes have necessarily to undergo all the troubles and worries of an expensive and protracted litigation. It should further be noted that the English Law on the subject is very much the same......We think that it would be entirely repugnant to the scope and object of the Act if a suit like this were allowed to be decided in a civil court and we accordingly hold that by the substitutional remedy provided under the rules in the shape of a reference to the Registrar the common law remedy by an action in

1. In the case Mahadev Rao V. Pithapuram Urban Co-operative Bank (1953 (2) M.L.J. 1340) the dispute was about the election of directors of the Bank. The Madras High Court held that it was one "touching the business of the society". The word 'touching' was clearly not intended to restrict the meaning of the 'business'; it was designed to extend its scope."

a civil court has by necessary implication been taken away.

(The suit was for a declaration that bonds said to have been executed by plaintiff were forgeries : the Munsiff threw out the case as barred by the rules : the Lower Appellate Court held that a Civil suit could lie).

The various Provinces have somewhat different rules. Those in the Punjab seem to be most detailed and may be quoted as an example.

1. Any dispute touching the business of a Co-operative Society between members or past members of the society or persons claiming through a member or past member or between a member or past member or persons so claiming and the Committee or any officer, shall be referred to the Registrar. Reference may be made by the Committee, or by the Society by resolution in general meeting, or by any party to the dispute, or if the dispute concerns a sum due from a member of the Committee to the society by any member of the society.

For the Bombay Act, see Appendix. Madras specifically excludes a "dispute regarding disciplinary action taken by the society or its Committee against a paid servant of the society" (cf. Appendix).

Note:—A "dispute" includes claims on the part of a society for money due to it from its members. This would include an instalment of share-capital but would not include a subscription not authorised by the by-laws.

The Bombay Act has : a dispute shall include claims by a society for debts or demands due to it from a member or past member or the heirs or assets of a past

member whether such debts or demands be admitted or not.[1]

"Person claiming through a member" includes the heirs, executors or administrators and assigns of a member and also his nominee where nomination is allowed (Industrial and Provident Societies Act). The rules of a society are binding on these persons.

"Shall be referred"—this excludes the jurisdiction of the Civil Courts. If, for instance, a member sues a society for his deposit or share-money or share of profits, etc, the society may plead this rule and so remove the case outside the jurisdiction of the Court and there can be no proceedings for injunction. This, of course, does not apply to the case of non-member depositors or other creditors (non-members) who may sue in Court.

As criminal courts follow the decisions of civil courts on questions of fact, the compulsory arbitration procedure ending in a final decree serves to reduce opportunities for criminal litigation.

The Bombay Act provides that if the question at issue between a society and a claimant, or between different claimants, is one involving complicated questions of law and fact, the Registrar may, if he thinks fit, suspend proceedings in the matter until the question has been tried by a regular suit instituted by one of the parties or by the society (see Appendix).

---

1. Sec. 51(c) of the Madras Act further widens the scope to include disputes "between the society or its committee and any past committee, any officer, agent or servant or past officer or past agent or past servant or the nominee, heirs or legal representatives of any deceased officer, deceased agent or deceased servant of the society." Sec. 86 of the Bengal Act includes disputes between a surety of a member, past member or deceased member of the society whether such surety is or is not a member of the society. Sec. 48(1) (e) of the Bihar Act includes disputes between a financing bank authorised under the provisions of sec. 16(1) and a person who is not a member of a society.

A dispute as to whether a person was or was not a member of a society would not be included in this rule.[1]

Section 28 of the Indian Contract Act (IX of 1872) declares to be void every agreement whereby any party thereto may be restrained from enforcing his right by the usual legal proceedings in the ordinary tribunals. But an exception to the section provides that a contract by which two or more persons agree that any dispute, which may arise between them in respect of any subject or class of subjects, shall be referred to arbitration is not illegal. Such an agreement may be filed in court and carried into effect. It may be an agreement to refer present or future differences. The provisions in the Contract Act and the Specific Relief Act amount to this, that if a person, who has contracted to refer to arbitration any dispute that might arise in future between him and another, refused to do so, his contract would be a bar to his maintaining or carrying on a suit in respect of the subject-matter of reference.[2]

The concluding sentence of this rule is intended to meet the case where a debt is owed by a member of the Committee, and the other members refrain from proceeding against him. Most provinces have not yet adopted this device.

2. The Registrar may either decide the dispute himself, or appoint an arbitrator, or refer it to three arbitrators, of whom one shall be nominated by each of the parties and the third shall be nominated by the Registrar and shall act as chairman. When any party to a dispute fails to nominate a suitable arbitrator within fifteen days, the Registrar may make the nomination.

---

1. Explanation (2) to sec. 48(1) of Bihar Act indicates that "the question whether a person is or was a member of a registered society or not shall be a dispute within the meaning of this sub-section.

2. D. C. Banerji, Treatise on the Law of Arbitration in India pp. 26-27.

No legal practitioner may be nominated as arbitrator by any party.

Note:—The object of securing quick decisions based on equity would obviously be defeated if each party were allowed to nominate a legal practitioner to represent him under the cloak of an arbitrator.

Any person, in whom the parties have confidence and to whose decision they may choose to refer their dispute or difference, may be selected to act as an arbitrator, provided he is not prohibited from so acting by an express provision of a Statute or by reasons of public policy. Every person is free to choose his own judge for the settlement of any matter in controversy between himself and another: and the judge so chosen, if accepted by the opposite party, is clothed with authority to arbitrate upon the controversy referred to him. If the parties choose an incompetent or unfit person, that is their own affair.[1] The Madras Act empowers the Registrar to transfer the reference for disposal to any person who has been invested by the Local Government with powers in that behalf.[2]

3. In such proceedings the Registrar or arbitrator shall have power to administer oaths, to require the attendance of the parties and witnesses, and require the production of all necessary books and documents by a summons delivered orally or sent by hand or by registered post or through the nearest civil court having jurisdiction in the area in which the society operates and shall further have power to order the expenses of deter-

---

1. D. C. Banerji, Treatise on the Law of Arbitration in India, p. 152.

2. Under Bengal Rule 120 the Registrar may appoint arbitrators from (a) officers of any department of Government (b) officers, paid staff or members of co-operative societies, (c) members, officers or paid staff of the paid authority constituted under sec. 81, (d) members of any local body, (e) Registered Accountants.

mining the dispute to be paid either out of the funds of the society or by such party or parties to the dispute as he may think fit.

Note:—The wording follows that of the Friendly Societies Act, The power to administer oaths is already conferred by section 4 of the Oaths Act (X of 1873), but not the power to administer an oath under section 8 as he is not a court.

The Evidence Act (see section 1) does not apply to proceedings before an arbitrator, who is not required to comply strictly with the rules laid down in that Act. It is not a valid objection to an award that an arbitrator has not acted in strict conformity with rules of evidence. At the same time as it is important that awards should carry the same weight and command, the same respect as judicial decisions, arbitrators should follow the spirit of the Evidence Act.

The costs of the reference and of the arbitration proceedings shall, unless otherwise provided by the order of reference, be in the discretion of the arbitrators or umpire, who may direct to and by whom and in what manner these costs shall be paid. A general reference gives the arbitrators exclusive jurisdiction to deal with the costs of the suit. The court cannot order costs to be paid contrary to the award.

Madras, however, has been advised that under the present Act, an arbitrator cannot award costs. Its new Act empowers the Local Government to frame rules providing for the levy of expenses incidental to such proceedings. But if the question of costs is included in the reference, the arbitrator can give an award upon this. In Bombay (1928) provision has been made for the payment of arbitrators according to a moderate scale and for the subsequent recovery of the amount from the defaulting societies and members. The Bombay Act (sec. 71 (u)) gives Government power to frame rules

for fixing and levying the expenses by determining the dispute. The rule runs: The Registrar or his nominee and the arbitrators shall have power to order the expenses of determining the disputes to be paid out of the funds of the society, or by such party or parties to the dispute as they may think fit, according to a scale laid down by the Registrar. The Registrar may fix the fee to be paid to his nominee out of the expenses so recovered. Arbitrators are paid on the following scale: —

For a claim of	Rs. 100 or part thereof	Rs. 2 ......
" " "	between Rs. 100 and Rs. 200......	2 per cent.
" " "	over Rs. 200......	Rs. 4 for the first Rs. 200 and 1 per cent for every Rs. 100 in excess.

A flat rate of annas eight in each case for clerical expenses and other incidental charges is allowed.

When awards are executed through the Revenue Department, provision is also made for payment to the village officers at a rate of one per cent of the recoveries actually made by them.

If the arbitrator moves the court to issue process, the court shall thereupon issue process in the same manner as it would issue in suits tried before it. A court may also issue commission for the examination of any witnesses in the same manner as it would in a trial before itself.[1]

4. The Registrar or arbitrator shall hear the evidence of the parties and witnesses who attend, and, upon that evidence and after consideration of any documentary evidence produced by either side, a decision or award shall be given in accordance with justice, equity

1. D. C. Banerji, Treatise on the Law of Arbitration in India, p. 193, following 7 Bom. L. R. 560-1905.

and good conscience, and shall be reduced to writing. In the absence of any party duly summoned to attend, the dispute may be decided against him in default. When three arbitrators are appointed, the opinion of the majority shall prevail.

Note:—The arbitrator must not make his award without hearing all the evidence: both sides must be heard in the presence of each other (except in *ex parte* proceedings). The arbitrator should be careful not to examine a party or witness except in the presence of the opposite party[1]. The arbitrator should give notice, that, in the absence of either party on the date and at the place fixed, he will proceed *ex parte*. He may so proceed where one of the parties keeps back his evidence to delay the reference, or will not attend when called upon, with a view to defeat the reference. If upon notice given by the the arbitrator, a party does not appear, the arbitrator may proceed *ex parte*. But if he proceeds *ex parte* without sufficient cause, or without giving the party absenting himself clear notice of his intention so to proceed, the award may be avoided.[2]

The award implies an adjudication or decision by the arbitrator upon the matter submitted to him. It need not be a reasoned judicial decision and it need not contain reasons for the decision.[3]

Bombay requires the Registrar or his nominee to record a brief note of the evidence of the parties and witnesses who attend.

5. Any person duly summoned by the Registrar or arbitrator to appear before him or to produce any document and failing to do so shall be liable to the penalties prescribed in paragraph 7(2) of the second schedule of the Code of Civil Procedure, 1908.

---

1. D. C. Banerjee. Treatise on the Law of Arbitration in India p. 220, cf. 66 P. R., 1907.
2. Ibid., p. I 195.
3. Ibid., p. 223.

Note:—This runs as follows: Persons not attending in accordance with such process or making any other default or refusing to give their evidence, or guilty of any contempt to the arbitrator or umpire during the investigation of the matters referred, shall be subject to the like disadvantages, penalties and punishments by order of the court on the representation of the arbitrator or umpire, as they would incur for the like offences in suits tried before the court.

6. Any party aggrieved by an award of an arbitrator may appeal to the Registrar, in person or by agent, within one month of the date of the award.

Note:—Some provinces provide for an appeal against the decision of the Registrar. Madras is advised that no rule providing for appeals against arbitrators' decisions or awards could legally be framed under this Act. Bombay provides for appeals from arbitrators' awards to the Registrar in its new Act (section 56). Burma did not adopt this. The Madras Committee recommended that the Registrar should have power, either on his own motion or on the application of any party interested, to revise an award, or an order of an arbitrator, in order to rectify obvious errors resulting in injustice or hardship and this has been incorporated in the new Act, section 51(5).[1]

Arbitrators are final judges, not only of all matters of fact, but also of all matters of law, which arise in the course of the proceedings before them, or which are involved in the decision of the subject-matter of the

---

1. Sec. 48 of the Bihar Act provides: "(6) any person aggrieved by any decisions given in a dispute transferred or referred under clause (b) or (c) of sub-section (2) may, within three months from the date of such decision appeal to the Registrar.

(7) The Registrar in the case of disputes under this section shall have the power of review vested in a Civil Court under section 144 and under Order XLVII rule 1 of Code of Civil Procedure, 1908 and shall have also the inherent jurisdiction specified in section 151 of the said Code.

(8 The Registrar may, where it appears to him advisable, either on application or on his own motion state a case and refer it to the District Judge for decision and the decision of the District Judge will be final".

reference.[1] If an award is regular on the face of it, the court will presume, unless the contrary be proved that everything has been rightly and duly performed.[2] The arbitrator cannot be examined as a witness as to the grounds of his decision : he cannot be examined in respect of those matters which 'influenced or induced him in arriving at certain decisions ; but he may be examined as to matters that passed before him, which would be an admission of parties, and which would assist the court in coming to a right conclusion. He may be called to prove his own mistake or misconduct.[3]

7. An arbitrator's award, if no appeal has been made within a month, or a decision of a Registrar originally or in appeal, shall not, as between the parties to the dispute, be liable to be called in question in any civil or revenue court, and shall be in all respects final and conclusive, except on proof of the receipt of a corrupt gratification by the arbitrator.

Note:—"on proof", not on the allegation.

In a Bombay case (quoted in Bombay Co-operative quarterly, March 1923) after an arbitrator had been appointed, during his enquiry, the member defaulting died : the arbitrator brought on record the heirs of the deceased member, and gave an award against them. The Appellate Court held that the award was valid and the procedure of the arbitrator perfectly legal. The executing court had no power to question the validity of the award it was asked to execute.

8. A decision or award shall, on application to any civil court having jurisdiction in the area in which the society operates, be enforced in the same manner as a decree of such court.

---

1. Banerji, pp. 207-208.
2. Ibid., p. 242.
3. Ibid., pp. 163, 164

Note:—This rule has now been adopted in most provinces; it is a defence of the principle of arbitration against the rulings of appellate courts which, together, render the whole matter in dispute liable to be called in question on appeal. Experience shows that if any loophole is allowed, the intention of preventing these societies from being dragged into court will be frustrated. If the other party denies that any award has been given, the award will have to be proved. But it is usually sufficient to call upon the party to admit the award (Civil Procedure Code, First Schedule, Order XII, rule 2). The well-known reluctance of Committees to take out execution proceedings has been met in Bombay by a rule empowering the Registrar to authorise certain of his officers to call for and send arbitration orders for execution.

Madras has a rule :—

The decree or award shall be enforced in either of these ways :—(a) on a requisition to the Collector of the District made by the Registrar of Co-operative Societies all sums recoverable under the decision or award shall be recovered in the same manner as arrears of land-revenue :

(b) on application to the Civil Court.........as a decree of such court.

Ajmere—Merwara adopted this in 1922 and Uttar Pradesh has the same rule. In Madras "Civil Court" includes village courts constituted under the Madras Village Courts Act.

The Bombay Act embodies the principle of the Madras rule in section 59, the order or award may be executed by any civil court or according to the law and under the rules for the recovery of arrears of land-revenue. A Co-operative Society adopted the second course and the collector ordered the detention of the defaulting member in civil prison The latter filed a petition for insolvency and was held protected from imprisonment. The Judicial Commissioner of Sind (84 of 1929) held that debts due to Co-operative Socie-

ties stand on no better footing than ordinary debts and can only be paid *pro rata* with other secured debts. It would be an improper exercise of discretion to refuse to grant interim protection to a debtor against arrest or detention for a debt due to the society and to permit his being detained in prison, and at the same time to take possession of his property for rateable distribution amongst his creditors, merely and solely because the society has chosen the alternative remedy of enforcing the claim by approaching the collector.

Collection as an arrear of land-revenue may involve the use of village officers, so Bombay gives the Registrar power to order the expenses of such recovery to be paid out of the funds of the society or by the party or parties in default. This practice of executing decrees through the Revenue staff is said to be throwing a large addition of extra work on to the establishment in Bombay. In the Central Provinces, the Registrar seems to make sparing use of this power and issues about one hundred or less certificates a year. In Uttar Pradesh the Registrar (1930) complained that "the fact that tehsildars armed with powers of arrest and attachment collected only 6 per cent of the dues shows the amount of interest taken by them in the work."[1]

---

1. While the execution of awards and decrees through the Civil courts and the Revenue Department was not discontinued in Madras Sec. 57A empowered the Registrar to recover these dues through his Departmental agency but under this section money awards, decisions, decrees etc. only can be enforced and not non-monetary awards, decisions or decrees. Monetary decrees, awards etc. issued by civil courts can also be enforced under this section. The Registrar can also recover under this section any sum awarded by way of costs under sec. 41, any sum to be recovered under sec. 47 as a contribution to the assets of a society or as costs of liquidation etc. Recovery will be made by the attachment and sale or sale without attachment of the person against whom such decree or award or order has been issued. Similar provisions exist in the Co-operative Societies Acts of Mysore, Orissa, Jammu and Kashmir.

The Punjab High Court held (2nd Appeal No. 695 of 1923 decision dated 17th November, 1924) that where one award was not executed, and, later, a second reference to arbitration was made and a second award was given, the court was bound under this rule to enforce the award and could not go behind it. It could not entertain the plea that the award was invalid owing to the previous one. It is to be noted that the Registrar himself has no power to execute his own award and consequently it is not necessary to submit a certificate of non-satisfaction with the application for execution.

9. In proceedings before the Registrar or an arbitrator, no party shall be represented by a legal practitioner.

Note:—In England, arbitrators may decline to hear counsel. Some provinces do not exclude legal practitioners from appearing in an appeal before the Registrar. This rule does not exclude legal practitioners from being consulted before reference, or from appearing in execution-proceedings.

It is worth noting that, under the English practice where no decision is made in a dispute within forty days after the aggrieved person has made application for the matter to be dealt with under the rules of the society, such person may apply to the county court to determine the dispute.[1]

The following paragraphs of the Second Schedule of the Civil Procedure Code (1908) are reproduced here for reference:—

Where award or matter referred to arbitration may be remitted.

"14. The Court may remit the award or any matter referred to arbitration to the re-consideration of the same arbitrator or umpire, upon such terms as it thinks fit—

1. See Co-operative Union's Industrial and Provincial Societies Act, p. 55.

(a) where the award has left undetermined any of the matters referred to arbitration, or where it determines any matter not referred to arbitration, unless such matter can be separated without affecting the determination of the matters referred:

(b) where the award is so indefinite as to be incapable of execution:

(c) where an objection to the legality of the award is apparent upon the face of it.

"15. (1) An award remitted under paragraph 14 becomes void on failure of the arbitrator or umpire to reconsider it. But no award shall be set aside except on one of the following grounds, namely:— Grounds for setting aside award

(a) corruption or misconduct of the arbitrator or umpire:

(b) either party having been guilty of fraudulent concealment of any matter which he ought to have disclosed, or of wilfully misleading or deceiving the arbitrator or umpire:

(c) the award having been made after the issue of an order by the Court superseding the arbitration and proceeding with the suit or after the expiration of the period allowed by the Court or being otherwise invalid.

"(2) Where an award becomes void or is set aside under clause (1), the Court shall make an order superseding the arbitration and in such case shall proceed with the suit.

Arbitration without the intervention of a court.

Filing award in matter referred to arbitration without intervention of Court.

"20(1) Where any matter has been referred to arbitration without the intervention of a Court, and an award has been made thereon, any person interested in the award may apply to any Court having jurisdiction over the subject-matter of the award that the award be filed in Court.

"(2) The application shall be in writing and shall be numbered and registered as a suit between the applicant as plaintiff and the other parties as defendants.

"(3) The court shall direct notice to be given to the parties to the arbitration, other than the applicant, requiring them to show cause, within a time specified, why the award should not be filed.

Filing and enforcement of such award.

"21. (1) Where the Court is satisfied that the matter has been referred to arbitration and that an award has been made therein and where no ground such as is mentioned or referred to in paragraph 14 or 15 is proved, the Court shall order the award to be filed and shall poceed to pronounce judgment according to the award.

"(2) Upon the judgment so pronounced a decree shall follow, and no appeal shall lie from such decree

except in so far as the decree is in excess or not in accordance with the award."[1]

(m) provide for the withdrawal and expulsion of members and for the payments, if any, to be made to members who withdraw or are expelled and for the liabilities of past members;

Burma has altered the latter part to run: provide for the mode in which the value of the share or interest shall be ascertained. Madras adds:—or the estates of deceased members.

Withdrawal—The right of withdrawal is characteristic of Co-operative Societies. Its importance varies with the liability. In societies of unlimited liability, a member must be able to withdraw before any liability is incurred

---

1. With regard to limitation Madras Rule 15 provides that the period of limitation for referring a dispute "shall be regulated by the provisions of the Indian Limitation Act 1908 as if the dispute were a suit and the Registrar a Civil Court" but where the dispute relates to (a) any act or omission on the part of the society or its Committee etc. the reference must be made within two years when the act of omission took place, (b) the election of a member or an officer of the Committee the reference must be made within two months from the date of election.

Act II of 1912 has no similar provision. In Ramdutt Ramkisandas Vrs. E D. Sassoon 1929 P. C. 103 the Court held that Sec. 3 of the Limitation Act may be said to apply by implication to arbitration hence claims barred by the Limitation Act should be rejected by the arbitrator. In Chatra Serampore Co-operative Credit Society V. Bejoy Krishna Dey (A.I.R. 1940 Cal. 152), it was, however, held that although the claim is barred by limitation, it is not such an error as would make the decision of the tribunal one made out of jurisdiction. Sec. 63 of the Bihar Act provides that notwithstanding the provisions of the Indian Limitation Act the period of limitation for debt due to a society by a member shall be computed from the date of his death or cessation of membership.

Bengal Rule 13(1) provides that a member of any registered society may, if he is not in debt to the society or is not a surety withdraw from the society after giving one month's notice in writing to the society.

to which he objects. He is only liable for the debts as they exist at the time he ceases to be a member (sec. 23) and therefore it is of little use allowing him to retire after so many months' notice. The right to withdraw is thus a very valuable check on carelessness or rashness, but at the same time precautions must be taken to prevent such a wholesale withdrawal of members as would leave the creditors of the society without adequate security. These precautions must be set out in the by-laws and once so set out, they cannot be altered without an alteration of the by-laws which requires the approval of the Registrar. A resolution of a general meeting is, of itself, insufficient. When a man joins a society he should know how he can get out of it. Compulsory retention of membership destroys mutual confidence.[1] In Germany a member has the right to withdraw, he must give three months' notice and the withdrawal takes effect at the end of the business year. If he ceases to reside within the society's area (sec. 6 (1) (a)) both sides may insist on withdrawal. The share-value is paid to him but he has no claim on the reserve or other assets and may be made to pay up his share of any deficit: his legal claim to share-capital lapses in two years: if the society is dissolved within six months the withdrawal is null and void.

It has been held that withdrawal here relates only to a direct voluntary withdrawal and not to a cessation of membership as a result of disqualification under the Act.

---

1. Cf. Co-operation in Finland, p. 70. The law allows Co-operative Societies to bind the members by their rules to remain in the society for a term not exceeding two years. In Belgium and Italy also a society has power to impose membership either for a given number of years or the period of the society's existence. But the general rule is to allow retirement. Membership in a Co-operative Society is a voluntary bond which can be severed at will (cf. Fay, Co-operation at Home and Abroad, 2nd Edn., p. 367-8).

Payment on withdrawal—As societies with withdrawable share-capital and limited liability should not carry on the business of banking, these societies should not repay the share-value but should leave the retiring member to transfer to a member. This does not apply with the same force to unlimited liability societies. Mr. Wolff says withdrawable shares encourage people to come in but he would insist on a fair notice and make withdrawal permissible only at the end of the financial year. Section 19 (1) of the Industrial and Provident Societies Act is clear : "No registered society which has any withdrawable share-capital shall carry on the business of banking."

Expulsion—The principle of careful selection of members carries with it the right to expel in order that any one deteriorating in conduct or character and thereby prejudicing the society may be got rid of.

The by-laws should provide that :

A member may be expelled:—

(i) if he fails to fulfil his obligations in the matter of dues. (The Schulze-Delitzch model rules allow only three months' arrears, Raiffeisen rules allow six months. The Burma Committee recommended that whenever it becomes necessary to proceed against a member for default, he should normally be expelled unless he at once makes full repayment);

(ii) if he becomes a member of another similar society and refuses to withdraw; this is very necessary in the case of societies for production and sale. In accordance with the policy of publicity, each member has the right to inspect the books of the society and may give away information to a rival society of which he is also a member.[1]

---

1. Powell, pp. 43, 44: Herrick, p. 277.

(iii) if it be found necessary to proceed against him for debt;

(iv) if he becomes bankrupt;

(v) if he engages in acts contrary to the principles of the society;

(vi) if he becomes insane (and so incapable of incurring legal liability);

Italy adds:—

(vii) if he be convicted by a criminal court (especially of bribery, forgery, theft, or fraud),

(viii) if he shall have committed an act considered dishonourable by the Managing Committee.

Distributive societies usually reserve the right to expel any member who ceases to deal with them or whose purchases fall below a fixed minimum.[1]

If a member of an unlimited liability society joins another one and so pledges his liability twice over, he ought to be expelled.

Bombay has a clear rule: where a person has become a member of two such societies, either or both of the societies shall be bound to remove him from membership upon a requisition from the Registrar to that effect.[2]

A bankrupt must cease to be a member if the holding of a share is a condition of membership, for all his property becomes vested in the assignee.

The following rules are usually prescribed for societies with unlimited liability.

---

1. The New York State law on Co-operative, Agricultural, Dairy and Horticultural Societies enacts that any such association may admit as members, persons engaged in agriculture, dairying or horticulture. Any person shall forfeit his membership upon proof being made to the association that he has ceased to be engaged in agriculture, dairying or horticulture.

2. By-laws of Madras Societies provide for expulsion "if a member deceives the Society in any way or if his general conduct is such as to render his removal necessary in the interests of the Society". Under Rule 18(b) no expelled member can be re-admitted within two years from the date of such expulsion except with the sanction of the Registrar.

(1) A member may, provided he is not in debt to his society or is not surety for an unpaid debt withdraw from the society after giving one month's notice to the Secretary.[1]

(2) A member who ceases to be qualified under the by-laws may (or shall) be removed by the Committee.

(3) A member may be removed or expelled from the society in accordance with such procedure and for such causes as are prescribed by the by-laws and not otherwise.

(4) A member withdrawing, removed or expelled from the society shall be entitled after the period prescribed by section 23 to repayment, without interest, of any money paid by him or his predecessor in interest towards the purchase of a share or shares.

This last rule cannot be applied to societies with limited liability, as, in these, the share-money is ordinarily not withdrawable, so long as the society owes money to creditors. In limited liability societies the right to withdrawal is not important, especially where the shares are fully paid-up.[2]

---

1. In a society of unlimited liability, a member should be allowed to withdraw at once before a resolution, incurring a liability to which he objects, is passed. But as this might permit of a sudden collapse of a society with outside liabilities, a period has been prescribed in which arrangement could be made for liquidation or for meeting these liabilities.

2. The constitution of the Chinese agricultural producers' co-operatives provides that members are free to withdraw from membership. When he withdraws he may take with him the means of production which he still owns and withdraw his share contribution and his investment in the co-operative. If he cannot take his land with him because the Society has used it for important construction work, it will exchange his plot for one of a similar size and value or pay him suitable compensation for it. (Article 15).

A member who commits a serious crime and is deprived of political rights must be expelled from the Co-operative. A member who gravely violates co-operative regulations or commits many serious mistakes and refuses to repent and correct them after being repeatedly admonished and penalised may be expelled by decision of a general meeting of the members but he may appeal to the county people's council against this decision.

The decision to expel a member shall not apply to members of his family who belong to the co-operative (Article 16).

(n) provide for the mode in which the value of a deceased member's interest shall be ascertained, and for the nomination of a person to whom such interest may be paid or transferred;

See notes to section 22.

Deceased member's interest—Some Provinces have the following rule:—

The sum representing the share or interest of a deceased member in the capital of a society with unlimited liability shall, for the purposes of section 22, sub-section (1), be the amount actually paid up towards the value of the share or shares held by him (and Burma adds): unless the by-laws provide for calculation thereof otherwise. This rule makes no allowance for losses. In Germany the value is calculated after examination of the annual balance-sheet, and this is clearly the best method. The Friendly Societies Act limits the value of the share so devised to one hundred pounds.

Nomination—All Provinces have made similar rules providing that:—

(1) a member may (or shall) nominate a person (and only one) to whom under section 22 his share or interest shall be transferred;

Note:—The Indian Act follows the Friendly Societies Act and allows only one person to be nominated. The Industrial and Provident Societies Act allows more than one because the objects of many societies is to provide provident funds for widows and children. The Bombay Act allows more than one nominee but Madras adheres to one only.

(2) a member may revoke or vary such nomination by writing;

(*Note*:—He must do this during his life-time, he cannot revoke it in his will).

(3) the nomination must be registered in the books of the society kept for the purpose :

(4) the member must report the death of his nominee : *to these Madras, Bengal, Punjab, etc., add* :

(5) the nominee may become a member only if admitted by the Managing Committee.

The rules are taken from the Friendly Societies Act (sec. 56) which adds that the nominee must not be an officer or servant of the society unless he is related within a specified degree to the nominator.

A minor member cannot legally appoint a nominee.

In England, the marriage of a member operates as a revocation of any nomination previously made by a member.

It is to be noted that where the rules provide a method of revocation of the nomination, a nomination is not revocable in any other way than that prescribed, e.g., by the subsequent will of the nominator. The rules bestow no power of bequest or of appointing an heir but merely enable a society to dispose of a deceased member's interest without litigation. The society is bound to follow the nominator's expressed wish ; it must never become a party to any family arrangements in regard to division of the property. It must pay to the person nominated or to "such person as may appear to be the heir or legal representative" and leave him to fall in with any private arrangement. In England a society which, on receiving satisfactory proof of death of a member, fails to pay the amount due to the nominee, commits an offence.

The Act should confer upon societies similar powers to deal with the interest of members who become insane.

(o) prescribe the payments to be made and the conditions to be complied with by members applying for loans, the period for which loans may be made, and the amount which may be lent, to an individual member.

In Germany the assent of the Board of Supervision is necessary to any loan granted to a member of the Committee: in Oregon, U. S. A., it is prohibited by law and generally there is a rule prohibiting such loans entirely during the term of office. They are also not allowed to be accepted as sureties. Mr. Wolff says: "Whenever a bank has suffered serious loss—in Germany at any rate—the cause has generally been that one or other of the Committee has been trusted with excessive credit; and hence the need of a Board of Supervision." The same trouble occurs in India and the Committee on Co-operation suggested the fixing of a maximum loan for each member in order to remove it.[1]

But a sub-committee of the Sixth Burma Conference decided that "no special restrictions as regards the issue of loans to chairman are required." This may be regarded as the general opinion where teaching has been adequate.

Order of preference—A Burma Conference put the order of precedence thus: cattle, debts, annual expenses of cultivation or living, redemption of land, purchase of land. The same Province had a by-law that no member

---

1. Cf. Madras Annual Report, 1915-16: "The natural tendency of punchayetdars to appropriate the major portion of loans for themselves and their dependents and friends is repressed by by-laws requiring the sanction of the general body of members to such loans; while another by-law, now being generally adopted, disqualifies a punchayetdar for office if he has defaulted in respect of his own loan for three months".

should receive a new loan, if there are applications pending from members who have received no loan.

Short term loans (for six months or a year) should generally be given preference over those for a longer term : the Italian Popular Banks give preference to loans for the smallest amounts. The object must be to make the best use of the money available. If one member has a large loan for a long period of, say, three years, the other members are prevented from using that money. Mr. Wolff does not favour a hard and fast preference for the small loan and would pay more regard to the character and purpose of the loan than to its size.

A banker requires to know the amount of the advance desired, the purpose for which it is granted, the length of time for which it is required and the security, if any, which is to be given for it These points may be discussed in order.

Amount which may be lent—Under the Friendly Societies Act it is prescribed that a society shall not make any loan to a member on personal security beyond the amount fixed by the rules, or make any loan which, together with any money owing by a member to the society, exceeds fifty pounds (Rs. 750). In German rural societies 78 per cent of the loans do not exceed £50. The maximum should be fixed moderately low as the main security is personal security and experience shows that there is a low limit to the loans which can reasonably be advanced on this security. At the same time, the desirability of restricting loans to what is actually necessary should not be strained into the advocacy of lending less than is necessary. In Roumania the maximum is £ 40. In Bombay the by-laws fixed Rs. 500 while in Burma at one time Rs. 200 was the limit. In Madras the by-laws prescribe the maximum ; the Ninth Bengal Provincial Conference decided that primary societies should not advance loans exceeding Rs. 250,

without the previous consent of the Central Bank and this has now been made a rule. The Fourth Departmental Mysore Conference (1917) decided that the maximum loan to individual members be fixed at Rs. 1,000, in ordinary cases and at Rs. 2,000 in special cases. The Russian small credit society fixes the maximum at Rs. 500 (approximate) for ordinary loans and at Rs. 1,000 for loans secured by mortgage on grain.

Throughout all forms of banking it is the big accounts that constitute danger: many bank failures have been due to the facilities granted to a few favoured accounts, and most bankers set their face resolutely against big loans. In India the question is complicated by the scarcity of Land Mortgage Banks or even any widespread banking system. The village credit societies are therefore called upon to advance loans for purposes that in other countries are regarded as outside the proper sphere of their operations and for amounts that elsewhere would be considered unwise. In rural areas there is no sound system of credit: one is being slowly built up and in the course of construction existing conditions have to be considered.

The limit to be fixed depends on the purpose in view. If, for instance, loans to cultivators are to be restricted to what is needed for agricultural purposes, the maximum will not be high. Experience is all against the attempt to pay off all the debts of a member on admission. In relieving debt without any corresponding effort on the part of the debtor, there is real danger of weakening his strength of character. It is best to pay off part of the debt at a time (para 37).[1]

---

1. The American Federal Farm Loan Act allows loans for the liquidation of existing indebtedness.

The Sixth Conference (1912) considered that it would be a good thing to encourage societies to fix an annual limit for themselves and this is now generally done. In most provinces there is a register showing the property of its members and its value and, in some cases, the maximum loan is a fixed fraction of this value. This is dangerous, the Madras Committee pointed out that loans granted by societies to members must be based upon the capacity of members to repay (i) out of the proceeds of their crops in the case of short term loans, and (ii) out of their savings in the case of long term loans. The Burma Committee were more definite: the amount of every loan should be limited by (i) actual requirements, and (ii) by the existence of a clear method of recovery from earnings within the time prescribed. The Seventh Conference (1913) resolved that it was premature to lay down the principle that in limited liability share societies, the size of loans should be proportionate to the share-capital paid up by borrowers.[1] The Committee on co-operation consi ered that the necessity for fixing the limits up to which individual members should receive normal credit is due largely to the fact that in the absence of such a standard there is a temptation for the members of a Committee to sanction larger loans for themselves and their friends than is equitable. The annual general meeting now generally fixes the maximum normal credit for each member for

1. In French credit societies, no limit has been prescribed by law as to the size or length of the short term loans. In some of the societies, the size is proportioned to the sums paid up by the borrowing member on his shares, and may not exceed 10, 15 or 20 times that amount; in others the maximum is fixed between Rs. 600 and Rs. 1,200 (approximate), but in every case the credit rests upon the character of the borrower, and no person, no matter how well-to-do, can get a loan unlesss his reputation for industry and honesty is good. The loans generally run for three months, with right to one, two or three renewals. Herrick, p. 340.

the following year. This limit the Committee is forbidden to exceed on its own authority. The Foreign Experts of the Banking Enquiry Committee were of opinion that fixing credits for each member should not be a matter for the general meeting but for the Managing Committee in consultation with a special Supervising Board. The general meeting should fix the maximum credit limit for members in general and should sanction credits for members of the Managing Committee and Supervising Board. Cases in which additional sums are required (e. g., to discharge old debt, or to release land from mortgage), have to be referred to the general meeting. A member is not, of course, entitled as of right to obtain the full amount fixed. The object has to be considered and approved and the paramount consideration must always be the certainty of repayment.

The original Punjab by-laws provided that no member should be given a loan greater than one-tenth of the total working capital. In Hungary the loan to any member must not exceed 15 per cent of the whole of the society's capital.[1]

The purpose or object of the loan—This controversial subject requires somewhat lengthy treatment. The main guiding principle is very simple, the extent to which it may in practice be departed from is the reverse of simple. It must be assumed that every loan will be repaid by the borrower This repayment must be made

---

1. The Second Five Year Plan indicates a marked departure from the existing basis of financing. "In the development of rural credit perhaps the greatest difficulty in the past has been that a substantial proportion of agriculturists are non-creditworthy according to the rules and conditions for advancing loans which were generally prescribed. To meet the situation it is proposed that loans should be advanced by credit societies on the basis of production programmes and anticipated crops. A maximum credit limit will be fixed for each member and within this limit he will be permitted to obtain loans according to his requirements."

from his income or from his capital. It will cause him loss unless the expenditure of the loan has yielded a return bigger than the loan itself. But the society exists not to cause loss but to increase gains; so that unless a loan is going to save the borrower something more than he will have to repay, it will not only cause him loss but it will contravene the objects for which the society was started. If the return from the expenditure of the loan covers principal, interest, and a little profit, the loan is productive. But as few cultivators keep accurate accounts, it is almost impossible to say confidently how far additional expenditure will bring in additional profit. Thus the importance of proper enquiry into the object of the loan cannot be too strongly insisted on. No banker lends money in the dark and even the village sahukar notes the object of the loan in his books. The Act itself says nothing about the object. The resolution recited that Government has deliberately refrained from placing any restrictions on the object for which loans are granted.[1] It would be suicidal for societies to place any absolute prohibition on the grant of loans for unproductive purposes. The society occupies the place previously held by the money-lender, and it must give loans for all purposes for which loans are essential, including any social expenditure required by the public opinion and if it failed to do this it would only encourage its members to resort to money-lenders. The Government of India, however, did not mean by this that loans should be given when they were not necessary. Loans must not be made where no profit or saving can be shown. If a member

1. The Government of India rejected the proposal to insert that 'no loans should be permitted except for productive expenditure' mainly on the ground that whatever restrictions might be imposed by law, these would encourage evasion and deceit (Sir D. Ibbetson. cf. Ray, p. 271).

must[1] have money (e.g., for his marriage), he may have it from the society. The Committee of 1901 proposed to restrict loans for marriages and domestic occurrences to members who had had deposit accounts with the society for the past three years and to an amount not exceeding 50 per cent. of the annual average of this deposit account for the previous three years. The Famine Commission, as we have seen, contemplated loans for reproductive purposes only being taken from the society and loans for marriages, etc., from the village money-lender. Experience has gradually taught co-operators that loans cannot be refused for all non-productive purposes, as owing to custom and sentiment some non-productive expenditure must be accepted as necessary. But the purpose of the loan should invariably be noted and should be approved by the Committee and there should be effective supervision to ensure that the sum borrowed is expended on the purpose approved. The Committee on Co-operation endorsed this and even stated that loans for unproductive purposes were in some cases not only permissible but advisable. They added, however, that precaution should be taken by societies to see that the expenditure was inevitable and that it was not excessive in amount (para 62). The general rule remains the same.[2] Loans must

1. But, as Mr. Wolff says:—'necessity alone will not justify loans if there is no certain prospect of recovery'.

2. The Technical Meeting on co-operatives in the Caribbean, arranged by the Food and Agriculture Organization in 1951 recommended that "extension of short-term credit to farmers through co-operatives be closely linked with a farm plan and with a system of supervised credit which set forth budgeted estimates of income and expenditure for the individual farm borrower; and further with broader plans for agricultural production in order to improve the security of loans and the effectiveness of agricultural planning".

Supervised credit arrangements were introduced in the United States by the Farm Security Administration during the nineteen thirties and later in Paraguay and other Latin countries.

ordinarily be for productive purposes only, and any departure from this must be made with great care and it must be realised that such a departure is an exceptional and not an ordinary proceeding. Loans for unproductive purposes are permitted as a concession to customs which cannot be eradicated. They must ever be a danger to the societies and a source of weakness to the members. The first rule is that loans to members shall only be made on the condition that the purpose for which money is borrowed is such that there is a sufficient prospect of the loan repaying itself by the production, business or economy which it will enable the borrower to effect. Mr. Wolff would strictly adhere to the rule of loans for productive purposes only so that the employment becomes a pledge for its own value. The loan should repay itself out of its own proceeds. Sir Horace Plunkett expresses the intention clearly when he says that once a community has learned the difference between borrowing to spend and borrowing to make money, it is on the road to prosperity. It has been argued by an Italian writer that the restriction of loans to agricultural objects prevents the development of credit, and implies that the loan is given not to the member but to such and such an agricultural operation. The personal factor is thus diminished. He thinks that as members are habitually engaged in agriculture, it may be assumed that they would devote the loan to their land. Unfortunately, in India at least, the cultivators have not yet realised the full advantage of putting capital into the land, and loans for purposes other than agricultural must be granted sparsely and under close supervision. This is not confined to co-operative societies. Bankers will advance money to finance transactions directly connected with the borrower's business but insist on vrey full particulars when money is required for other purposes. The banker must know

what is to be done with the loan as he wishes to be assured that its expenditure will strengthen and not weaken the position of the borrower. It is no argument in favour of unproductive loans to say that they are fully secured. Sureties may be quite good but they do not expect to be called upon to repay and they resent any effort to recover from them. The success of co-operative societies and the confidence they can attract from outside depends upon the ability and desire of the members to put the borrowed money to productive uses and to repay the loan out of the profits made thereby. Each loan should mean so much earning capacity, so much producing power for the individual borrower (cf. Committee's Report, para 2).

In allowing loans for unproductive purposes, every precaution must be taken to see that the purpose is necessary, that the expenditure is not excessive and that the loan is applied to it. Supervision is far more necessary in these cases than when the loan is for a productive purpose. Unfortunately the object is frequently falsely stated and it is practically impossible to check such untruthful statements effectually. There must be in the bond a provision for recalling the loan within one month or immediately if not properly applied and at inspections the strictest enquiry into the proper use of loans must be made (cf. Committee's Report, para 63).[1] The Poona Conference (1916) adopted the useful suggestion that the credit of individual members should be assessed under two heads: current agricultural expenses and other purposes. For the former individual cash credits

1. In Portugal the puspose of the loan must be stated in the application, and if the borrower uses it in any other way he must be expelled and can never become a member of another agricultural mutual credit bank, besides being liable to criminal prosecution and a fine of from Rs. 15 to Rs. 1500. Herrick, p. 424.

might be opened. The Committee on Co-operation considered <para 73> that when societies are firmly established on correct principles there is no better way of meeting the needs of members. Mr. Wolff insists that cash credits must not be used so as to dispense with the necessity of securing approval of the object of the loan: for current agricultural expenses it is the best method to employ. The Raiffeisen model rules dealing with cash credits specifically enjoin supervision over the due employment of loans so obtained. In Russia credit societies allow loans for a purpose not stated for very short periods and for sums not exceeding one-tenth of the sums usually granted.

In conclusion it may be stated that the primary object of credit societies is to supply the cultivator with working capital : ordinarily they should grant loans for none but productive purposes: they strive to promote the economic interests of their members and they seek to do this by providing money for purposes which will enable the members to repay principal and earn a profit. Unfortunately in the special conditions of India, it has been decided that loans cannot be confined to productive purposes. There are necessary expenses which the members must incur and it is better that they should borrow from their society rather than from the village money-lenders. But expendtiure on unproductive objects weakens the economic position of the members and the societies must exercise a very close check on this and must constantly be on their guard against the danger of granting loans too easily and so leading their members into increased indebtedness. The Act starts with the assumption <vide preamble> that the members will be persons of limited means whose position can be improved by the provision of capital: their economic position cannot be improved by providing them with money for unproductive purposes unless the expenditure

is so inevitable that, if the member cannot get a loan from the bank, he will be driven to borrow on harder terms elsewhere. If a refusal of the loan can be made without involving the members in debt to outsiders, it should be done.

The *period* for which a loan may be granted is determined, by two quite distinct factors, one, the period for which the society will have deposits or other funds to finance the loan, and the other, the time required for the full accomplishment of the object of the loan so that it may be repaid from the proceeds.[1]

If the loan is to be repaid from the additional wealth produced by its expenditure, the period must be long enough to allow of this additional wealth accruing. It is obviously no use advancing a loan for so short a period that the borrower cannot repay it from his income. To repay it from his capital would weaken his economic position. Agriculture requires funds of three kinds: fixed capital to be sunk permanently or for a long period in the acquisition or improvement of the land and in the purchase of equipment : circulating capital to be used for short periods in growing, harvesting and marketing the crops and capital for an intermediate period for such objects as bullocks, the more expensive machinery and minor improvements, which can be repaid in from two to four years. The ordinary business of commercial banks is credit transactions for two or three months. The Central Provinces and the Madras Committees laid great stress on the importance of dividing agricultural loans into long and short term loans, and recommended special arrangements for short term loan business. The Madras Committee distinguished these into crop loans repayable in instalments over a period of years out of the annual savings of the borrowers and proposed

1. Wolff: Co-operation in Agriculture, p. 262.

separation of accounts—separate promissory notes, separate ledgers and separate figures in the balance-sheets.[1] The Burma Committee found this elaboration in vogue with the result that no one knew what a member owed and the separate ledgers provided unlimited opportunity for fictitious accounting; a short term loan if not repaid was transferred to another ledger and shown as fully repaid in the original one and so on. They accordingly recommended simplicity of accounts. The Indian Central Banking Enquiry Committee notes that all the Provincial Committees and almost every competent authority on co-operative credit in India, are agreed that the existing primary societies, central banks and provincial banks......can supply only the short and intermediate credit. The Imperial Bank is prohibited from making loans for periods longer than six months. The commercial banks freely grant extensions where the security is sound so that it is difficult to determine what is the real period of their loans. The experience derived from liquidation proceedings suggests that some

1. Rule 8(A) of Madras prohibits societies, other than land mortgage banks and agricultural credit societies with unlimited liability, from granting loans for periods exceeding three years but the Registrar may by special order extend the period to five years in the case of loans for purchase of cattle and carts, construction and repairs of houses, purchase of land, land improvement, construction or major repairs to irrigation sources, liquidation of petty debts, development of cottage industries and expenditure on marriages. The Registrar will fix the maximum lending limit of the society for the grant of short-term loans and loans repayable after one year but within three or five years as the case may be. No agricultural credit society with unlimited liability shall grant loans for periods exceeding five years.

commercial banks lock up funds to an extent that is undesirable.[1]

By *banking facilities* are meant those which can be provided without such a "lock-up" as would impair the liquidity of funds and deposits at call and short notice. Where a business requires funds with a longer currency than a few months, it is said to require *financial facilities.*[2] Thus by a *short term loan*, a commercial banker means one for period not exceeding three months. Provided the security is good, he will of course fully extend, and it may be that a loan may run on for long periods, but ninety days is the usual period fixed at each extension. But agriculture seldom yields any return under four or five months, so that six months is almost the minimum period. It, on this account, needs a system of its own and beyond all doubt the best system ever devised for providing farmers with floating capital is the system of co-operative credit.[3] The existing commercial banking system has, in its leading features, been gradually evolved to meet the needs of the business and commercial world, not of agriculture nor even of industries. In the main, it finances not production but

---

1. With a view to enable the Reserve Bank to assist State Co-operative Banks to finance small and medium cultivators for the purpose of becoming shareholders in co-operative concerns connected with the marketing and processing of their produce (e. g., co-operative sugar factories) the Reserve Bank Act was amended in 1956. As a result of this amendment the Bank will advance loans repayable on the expiry of fixed periods not being less than 15 months and not exceeding 5 years from the date of making such loan. Loan advanced to a member will be 100 per cent of paid up value of the share held upto Rs. 500 and 50 per cent thereafter, with the proviso that the total loan will not exceed Rs. 1000/-. Loans will be granted to members (a) who are not defaulters (b) who have sufficient repaying capacity (c) who offer immoveable property as security. The rate of interest will be the bank rate.

2. As defined by the Board of Trade Committee to investigate the question of Financial Facilities for Trade.

3. Herrick, p. 9.

distribution. The great majority of farmers cannot look forward, as most business and tradesmen do, to having a continuous inflow of receipts throughout the year; his returns are seasonal. It is the length of the period of production, i.e. the length of time usually required before a loan can be repaid from the returns obtained by the outlay, that is the outstanding feature of the farming industry. Nature herself has fixed these limits, which the farmer is almost powerless to alter; whereas the manufacturer or businessman can, to a certain extent, shorten at will his periods of production or turn over his stock more rapidly so as to fit in with his credit requirements.[1] It is noteworthy that Luzatti's People's Banks have not been able to render as much help to farmers as the latter required or as their founders expected of them, for the reason that they do not find it convenient to grant loans for the long periods required by agriculture or else they obtain more profitable employment for their funds in the cities.[2] They lend for a term not exceeding six months and allow an extension for four months upon punctual repayment of the original loan. To farmers longer terms are allowed subject, however, to a maximum of one year. The small credit societies, however, are able to discount with the central financing banks the bills drawn by them on farmers and allow longer periods : one year for loans for cultivation, harvesting and purchase of seed and manure ; two years for loans devoted to buying livestock and three years in the case of loans for the acquisition of machinery.[3] In Russia, loans are never granted for longer than a year.[4] In Serbia, the maximum maturity for loans is two years, and this cannot be extended

1. Irish Report, p. 11.
2. Herrick, p. 353.
3. Agricultural Credit and Co-operation in Italy.
4. Herrick, p. 398.

except in case of bad crops, when a renewal of only six months is permitted.[1] In Portugal, the loans of a bank must not be for longer than one year, with a renewal for one year more.[2]

In Roumania, an Agricultural Loan Office may not lend for terms beyond nine months and the law does not provide for any prolongation. In India loans under the Agriculturists' Loans Act are for short periods of six months or one year. In the Central Provinces loans under this Act are advanced on pro-notes which have to be renewed every year (this enables the Committee to see that the security remains good).

The Madras Committee on Co-operation (1928) found that of the amount outstanding with primary societies of all kinds on 30th June, 1927, 27·47 per cent had been advanced for two years; 38·51 per cent had been advanced for more than two years but less than five years, and that 16·27 per cent had been advanced for periods exceeding five years.

Section 23 of this Act, limiting the liability of past members to two years, clearly suggests that, in general, loan transactions should be completed within this period. Liability for loans for longer periods might fall solely on the staunch members if others withdrew.

The Committee on Co-operation advocate by-laws fixing standard maximum periods as in Burma: The following may be taken as a suitable scale :—

(i) Loans for unproductive purposes :— short periods, and, as a rule, not exceeding two years.

(ii) Loans for trade or to enable cultivators to secure reasonable prices for their produce should be strictly limited to three months.

---

1. Herrick., p. 408.
2. Ibid., p. 423.

(iii) Loans for seed, food, cultivation expenses, or cattle fodder :—to be repaid after the next ensuing harvest.

(iv) Loans for purchase of carts or cattle, for liquidation of small debts, and for house-building :—to be repaid in two or three years.

(v) Loans for liquidation of large debts, purchase or redemption of land or expensive improvements of land :—to be repaid in three or four years.

Practically all provinces now realise the importance of concentrating on the short term or crop loan : the Burma Committee recommended that no long term loans be given at all : a minority wished to limit transactions to crop loans, but the majority allowed intermediate loans for cattle, although they stressed the need for great care in giving them and considered that loans for repayment of old debt, redemption of land, etc., should not be given until the society's own capital was sufficient to cover such transactions.[1]

The Managing Committee should have no discretion to vary these terms but may have authority in exceptional circumstances to sanction an extension up to one year when the time for repayment arrives. The society should reserve to itself in all cases the right to call in a loan at four weeks notice, and to call it in immediately when loss is threatened through deterioration in assets of either borrower or surety (cf. Raiffeisen Model Arti-

1. With a view to stress the importance of short-term loans, the Reserve Bank of India recommended in 1956 that one of the criteria for placing a central financing agency in class A of Audit classification should be that at least 50 per cent of the loans issued during the year should be for short-term purposes.

cles). It should be at once recalled if it is improperly applied.

In all cases where the period exceeds one year, repayments should be made by compulsory annual instalments and preferably by instalments on each crop.[1] This long period, characteristic of agriculturists' loans, necessitates special care in the taking of deposits. It is noteworthy that there is a considerable feeling abroad that Commercial Banks do not give credit for periods long enough for all the purposes of trade and it was to

---

1. While advances made by primary agricultural credit societies in Bombay increased from Rs. 1·70 crores in 1946-47 to Rs. 8·12 crores in 1951-52 those made by primary agricultural credit societies in Madras increased from Rs. 3·47 to Rs. 7·33 crores during this period.

Loans advanced by primary agricultural credit societies per 1,000 rural families in Bombay amounted to Rs. 5,690 in 1946-47 and to Rs. 18,161 in 1951-52. "Bombay has recorded very much quicker progress than Madras during the last few years and this period has, in Bombay, also been one in which the crop loan system has been sought to be gradually established in deliberate replacement of the older pattern in which creditworthiness and ownership are more or less interchangeable". "This period saw the emergence of a class of adjusted debtors who could not alienate their lands without the consent of debt adjustment boards and who, therefore, found it difficult to obtain credit from the usual sources."

The system of crop finance assumed more significance in 1948-49 when the re-organised Bombay State Co-operative Bank and central financing agencies together with primary credit societies undertook to provide short-term finance to all creditworthy agriculturists. Instead of fixing credit limits on the basis of landed security, special efforts were made to provide short-term credit on the basis of crop acreages and to link the time of repayment to the harvesting season. (Rural Credit Survey; Abridged Report, p. 101).

Darling has pointed out that in 1954-55 Bombay was responsible for 29 per cent of the total advances to agricultural credit societies and overdues amounted to 38 per cent of the amount on loan at the end of the year. In 4 years the percentage had more than doubled and as with overdues for the whole of India, each year showed an increase. "In Bombay in view of the great increase in overdues it is not surprising to find that in these five years the percentage increase in outstandings (140 per cent) is much greater than the corresponding increase in advances (95 per cent). The Bombay figures indeed give one little cause to suppose that, as things are at present, larger loans will lead to improved recoveries. It may well be the reverse." (Darling., p. 6)

find a remedy for this that the formation of a British Trade Corporation was proposed. It would give longer credits than ordinary banks, and in consequence would take no deposits at call or short notice and could open no current accounts except for the actual traders using its facilities.

The pressure brought on village credit societies in India to issue loans for comparatively long terms is in some measure due to the absence of other financial facilities. In other countries loans are advanced on first mortgage of land by special Land Mortgage Banks and by Insurance Societies. In America, the average period of loans advanced by the latter is five years, whereas the farmers, for the purchase and permanent improvement of land, desire loans for periods of from 25 to 35 years.[1]

In Baroda (*vide* Report for period ending March, 1921). "As Co-operative Societies cannot in consequence of the limited resources at their disposal, conveniently afford to make long term advances to their members for the liquidation of their old debts, Government was graciously pleased to sanction one lakh of rupees to be advanced to the Baroda Central Co-operative Bank for this special purpose. The Bank receives the money from Government at 3½ per cent. and lends it to the societies at 5 per cent, while the societies in their turn advance the necessary loans to their members at 6 per cent..... Similarly a sum of Rs. 50,000 has been sanctioned for the Mehsana District Co-operative Bank for redeeming the old debts of the members of the Co-operative Societies"

Punctuality in repayment is a most important point in all business and must be rigidly insisted upon. The Com-

1. Huebner, Agricultural Commerce, p. 330, Cf. Herrick, p. 7

mittee on Co-operation write that there is no defect more prominent or more dangerous in the management of Co-operative Societies in India than the exceeding laxity and unpunctuality in the repayment of loans...unless loans are repaid punctually Co-operation is both financially and educationaly an illusion, and no exertions are wasted which aim at ensuring promptitude in this respect...There is nothing in our opinion more important to the success of the movement than the provision of clear information as to the punctuality or unpunctuality with which loans are repaid (para 74). Punctuality should be secured by the application of personal pressure rather than by the levy of penal interest (para 76) (no penalty for non-payment can be levied unless this is previously provided for in the bond or by-laws). Mr. Wolff urges rigorous insistence on prompt repayment. The society's educational objects demand this. The Bank is to make people businesslike, to teach them to calculate, to make them conscientious. The longer are the periods for which the loans are granted, the more indispensable is it that the debt should be steadily reduced as time goes on. This kind of strictness forms a new kind of security. Repayments must, of course, be real and must correspond with a real reduction of the borrower's liabilties and not be made by a re-arrangement of debts.

It is incumbent on the society to accept repayment of loans in advance of the instalments due, if this can be done without involving it in loss. In India, the money-lender does not like payment in instalments: where security is good he often avoids repayment and the consequent necessity of finding a fresh outlet for his money. The society must improve on the money-lender but it may happen that, especially in the case of a large loan, an unexpected repayment in advance of the due date would result in the society having an unwanted balance on which it was probably paying interest to the Central

Bank. In the case of mortgage banks, it is not unusual in such circumstances to charge the borrower a sum equal to three or six months' interest in order to cover the expenses of finding a fresh investment for the money.

Renewals[1] are inevitable where owing to weather or other conditions, crops are precarious. The Sixth Conference (1912) considered that they might be given but only sparingly and when good excuse exists and the security remains sufficient.

It is very important to insist that the question of renewal does not rest with the borrower.: the consent of the sureties must always be obtanted to the proposed extension of their liability and the final decision must rest with the Managing Committee.

Of the danger of renewals, there is ample warning. Mr. Wolff, for instance, says: There is a distinct danger in uncalled for renewals. The concession made is very apt to be abused, and from such abuse may spring a bad habit, absolutely fatal to any society...... The point is to make sure that the case is genuine.[2] Another writer says: The temptation to connive at renewals arises naturally wherever the people entrusted with the management of the society have an insufficient appreciation of their responsibilities or are not competent to discharge them.[3] And again: The practice of rene-

1. By a *renewal* is meant the re-issuing or extension of a loan beyond the period for which it was originally granted, without proof that the money will be applied to any new purpose or that any additional profits will follow from its repayment being withheld. (Rural Reconstruction in Ireland, p. 145) Mr. E. P. Stocker, who has served on three Committees on Co-operation, would not 'renew' a loan but would allow the Committee to sanction an extension of the period, i.e. he would not re-issue the loan.

2. Co-operation in India, p. 167. But in Co-operative Credit for the U. S., p. 15, the same writer points out that owing to the uncertainty of the farmer's return, an arrangement for frequent renewals is necessary.

3. Rural Reconstruction in Ireland, pp. 145-146.

wals is one of the most insidious evils which may be brought about by the complaisance or carelessness of the Committee and denotes the beginning of decay.[1] It should not be necessary to point out that renewals form the usurer's favourite means for getting a borrower firmly into his clutches.[2]

The Madras Committee urged that extensions of short term loans should only be granted in the case of crop failure: in such case they should be freely sanctioned. The Burma Committee were more detailed:—All precautions as to amount and period of loans will avail nothing if renewals and extensions are granted too freely and without just cause. No renewals should be allowed. The borrower and the Committee must be taught that their original decision as to instalments is a definite promise and a definite order arrived at by mutual agreement, and that any departure from these terms should only be sanctioned for thoroughly sound reasons.

The *security for the loan* should generally be personal. Other kinds are subject to restrictions in section 29 (2) (3). The Committee on Co-operation follow all previous authorities in insisting on sureties for every loan. They write (para 65) that the primary

---

1. Smith Gordon, Co-operation for Farmers, p. 110.

2. The All India Rural Credit Survey found with regard to financing of primary agricultural credit societies that "the picture which emerges is the strikingly different one of an arrangement whereby the borrower is in effect allowed a limited permanent advance which is based on the security of his land and which he usually carries over from year to year. There is little or no relation between credit and purpose and therefore between short-term and medium term loans. Sometimes when the administration happens to be insistent on compliance with the formal properties, it is not unknown for devices to be adopted such as plausible 'book' adjustment or 'temporary repayment' followed by immediate reborrowing in order to make it appear that loans are being repaid annually" (Arbidged Report, p. 89).

security for all loans is personal: by the provision of securities recovery is facilitated and a further safeguard is obtained against the grant of excessive loans or the misapplication of money borrowed and they consider that the provision of securities should be the rule in India. Madras, however, still lends to a small extent on simple bond.

The chief security in short term credit is of personal character. The promise to pay is backed by the man's reputation for ability and willingness to pay. This is usually supported by the endorsement of one or two other men of at least equal standing.[1] If credit is to be cheap, the security must be good.[2]—It has been said that the strongest argument in favour of personal credit in co-operation is the educative value of co-operation. This educative value is enhanced by the system of personal sureties. But it is unwise to overburden friends. In the Fourth Burma Conference, a sub-committee resolved that persons taking loans in excess of Rs. 300 in Upper Burma and Rs. 500 in Lower Burma should be required to execute registered mortgage bonds in favour of the society. In some countries the law insists on two sureties being taken for every loan.

The Madras Committee found that 49·3 per cent of the loans in primary societies were secured by mortgages and 48·4 per cent on personal security. They found a greater degree of punctuality in the repayment of surety than of mortgage loans. A mortgage backing is desirable in the case of most long term loans but the Com-

---

1. American Commission's Report, Observations, Part I, p. 15.

2. If we would build for the future we must build wisely. In the world of finance the corner stone is ever the same—security. The only basis for cheap credit is the security that cannot be questioned. We should remember that promptness is the quickest way to establish a reputation for security. All obligations must be met at due date (Saskatchewan Report, pp. 208-209.

mittee issued a warning against the tendency of central banks and primary societies to consider loans on mortgages properly secured, and therefore necessitating no attention if overdue. The Burma Committee advised societies to shun mortgage security, confine themselves to personal sureties for all loans, and to protect themselves by limiting the loans to amounts and for periods for which this security is suitable.

In its commercial business, a joint-stock bank insists on security of certain well-defined kinds, but in dealing with farmers the peculiar nature of his business is recognised, and loans are advanced frequently on personal knowledge of the farmer and his business. Very large sums of money are lent, for instance, solely on the security of a statement put in showing the extent of the holdings, the stock upon the farms, rents and the nature and extent of other obligations. A branch manager is judged by his ability to advise and the success of his advice is tested by experience. He has to remember that banks must be liberal in lending where loans are justifiable, and that they cannot avoid sharing in the risks inseparable from all business enterprise but ability is shown in the choice of the risks. At the annual general meeting of the Westminster Bank in 1923 it was stated that "41 per cent of the farmers who borrowed of us received credit on that personal knowledge by our managers and the great care they exercise in selecting suitable cases for loans are reflected in the very small losses."[1]

---

1. "While in theory co-operative credit is personal credit based upon the character and repaying capacity of the cultivator the Survey data reveal that in actual practice a high proportion of the advances in many States is against the security of immoveable property". The class wise distribution of co-operative finance is predominantly in favour of the large cultivator. Whereas the average borrowing from co-operatives per family in the case of big cultivators was Rs. 21 as against Rs. 3.7 and Rs. 1.9 in the cases of medium and small cultivators respectively.

Qualifications of sureties—The sureties must not merely be solvent, they must be known from their means to be good for the amount (Raiffeisen rules). Even this is not enough, for if security is to be taken it must be adequate: in deciding whether a surety is good the point to be kept in view is not the sum which might be squeezed out of him by distress and sale but the sum which he could at any time pay without serious inconvenience. A safe rule is to accept a man as surety for a sum equal to one-tenth part of his property, for the payment of one-tenth will be quite a sufficient loss for him to bear.

In assessing a man's value as a surety, his liability to the society as a borrower must be deducted. The Irish rule provides that no member who is in possession of money lent to him by the society shall be accepted as surety for another member requiring a loan, unless the Committee are unanimous that it is safe to do so.

The acceptance of personal sureties is apt to be regarded by commercial banks as an element of weakness in co-operative credit: such banks regard government paper as the most acceptable form. A very interesting comment on this point is provided in the Report of the Punjab Banking Inquiry Committee (para 159) where it is stated that the loss to eleven Central Banks from depreciation of government paper is more than the total amount that has had to be written off by all central banking institutions in ten years on account of their loans to societies.

The rapid fall in the value of wheat and cotton stored in elevators and godowns, on which loans had been advanced, is another instance of the care required in any discussion of the relative utility of differing forms of security.

Non-members are not desirable sureties. Uttar Pradesh Conference held that though ordinarily the

sureties themselves should be members, non-members should not be debarred, but the real idea of sureties is that they should watch over the utilisation of the loan and so should be members. The Fourth Conference (1909) endorsed this view. There is risk in accepting non-members as these are not amenable to the discipline of the society and cannot be dealt with under the arbitration procedure.[1]

With this view Mr. Wolff disagrees: It is not necessary as some Indians stipulate, that the surety enlisted should be a member of the society. It will be quite sufficient to know that he is "good". If not a member, he will, by his liability engaged, by adding a new outside buttress to the fabric of the society, pledging more money for its liabilities.[2] And again— It is a mistake to suppose that the sureties must needs be members of the bank. The bank should give only to members, it may take from anyone. In truth, a surety, being first approved of course, not being a member of the bank, rather tends to strengthen the bank, as buttressing it with outside support. The one thing needful is that the surety be sufficient for its purpose and that its willingness to serve should be ascertained beyond doubt.[3] In actual practice, it is more convenient to have, as sureties, members who have already been selected for honesty and character. Bonds signed by non-members as sureties are not exempt from stamp-duty. Inspite of the great authority against it, the best

1. U. P. Rule 70 prohibits loan on a bond secured by the suretyship of a non-member except with the permission of the Registrar.
2. Co-operation in India, p. 166.
3. Co-operative Credit for the U. S., p. 53.

general rule is that sureties must be members.[1] The Bombay Conference of 1920 recommended that the Local Government should issue a rule prohibiting the acceptance of non-members as sureties by all Co-operative Societies and the Local Government has now done this "provided that the Registrar may, for special reasons exempt any society by name from the operation of this rule". It is pointed out that the acceptance of non-members would enable societies to advance loans with greater safety to members of joint families, as the other members of the joint family could then be made sureties for the loan advanced.

Mr. Darling (Ch. I of his Report) writes: In Saxony as in the Punjab, only members are accepted as sureties, but elsewhere in Germany there appears to be no objection to the non-member surety provided he belongs to the same village and is well known.

Loans on trust without sureties are permitted in Italian Popular Banks subject to strict conditions. The poor person must usually be recommended by two parties and he must have a good reputation for honesty and industry, he must be engaged in some business or industry and he must be able to read and write. These loans are limited to about sixty rupees; the maximum period is one year and no second loan is granted to a borrower who has not been punctual with his instalments. Moreover no second loan is granted until two months after repayment of the former one.

Where immoveable property is accepted as security, the value of the property should be twice the sum lent:

---

1. Herrick, p. 390, writing of rural Co-operative Credit Societies, under the Danish law says 'no security is allowed to be taken'. The financial standing of a member is determined by the registered cattle he owns, and the extent of his credit is Rs. 40 per head.

Mr. Strickland did not find this to be the practice now.

except where the period is short and repayment is by frequent (e.g. monthly) instalments.

Interest on loans cannot be fixed by Local Governments but the Committee thought the rate should be entered in the by-laws and made unalterable without the sanction of the Registrar.

The rate should be fixed in conformity with the general object of all co-operative associations, namely, the rendering of the best possible service at the lowest possible rate. It must be sufficient to pay expenses. Whether it should be higher than is necessary for this purpose is a matter of policy. In India, it is generally considered desirable to fix a rate high enough to allow of a margin of profit which swells the reserve fund and so protects the unlimited liability and increases the financial stability of the societies In Europe, this formation of a reserve fund is not considered so necessary, and societies work on the lowest possible margin over the interest on money borrowed. Generally the rate on loans is from one half to one and a half per cent. more than the rate paid on deposits. In some countries (Rumania, Italy, Hungary, etc.)[1] the State insists that the rate shall not be more than one or two per cent above the discount rate of the State bank or above the rate charged by the central financing agency. The general question has already been dealt with.

The Government of India rejected the suggestion to prohibit *compound interest*, because when fairly used, it is just: prompt recovery of debt is essential to the working of societies. There is danger that they may be too slack in dealing with their friends and neighbours and compound interest will provide a useful stimulus to the

---

1. Cf. Herrick, pp. 330, 360, Outline of European Systems, p. 19, Monograph, and Nicholson.

debtors.[1] Against this view may be set the general experience that toleration of avoidable arrears on any terms encourages a thoroughly wrong attitude towards them.

(p) provide for the formation and maintenance of reserve funds, and the objects to which such funds may be applied, and for the investment of any funds under the control of the society ;

See section 33 and notes, also notes to clause (r) post.

Reserve funds may be of two classes :—A *general reserve* is an amount set aside out of profits to provide additional working capital, or to strengthen the liquid resources, and to be available for contingencies. A *specific reserve* is an amount set aside out of the profits to provide for some probable or estimated loss on the realisation of certain assets (e.g. investment depreciation) or in respect of pending transactions (e.g. bad debts). The Indian Central Banking Enquiry Committee recommended that central banks should start bad debt funds by carrying a reasonable amount of profits to them in addition to the statutory allocation to the reserve. The practice in joint-stock companies may be thus stated :—Where additional working capital may be usefully and profitably employed in the business, it is sound financial policy to leave such profits (general reserve) in the business. The fact that the reserve is not invested, but is retained in the business, is not by any means a sign of weakness. But a reserve fund invested in gilt-edged securities, forming realisable assets that can be utilised at any moment should there

1. Sir Ibbetson—Ray, p. 272.

be a sudden call upon the business, is a source of considerable strength. A general reserve invested outside the business is called a Reserve Fund. When the reserve is not represented by specific investments, it is better called a Reserve account.[1]

The Raiffeisen model articles make the reserve fund indivisible and prescribe that on dissolution it should be handed over to a Central Bank at compound interest until one or more new societies have been formed on Raiffeisen principles, covering substantially the same area as the old one: or it may be handed over to the communal fund and the interest may be devoted to objects of public utility. In India and other countries, on dissolution, it must be devoted to some useful purpose in the district in which the society operated: the purpose is to be determined upon by the meeting at which the dissolution of the society takes place. The English model rules contain the same provision. Mr. Wolff[2] writes: "the reserve fund is by standing rule made the collective property of the bank, never to be shared out, not even in the event of the dissolution of the bank, lest there be a temptation to liquidate for the sake of the spoils......While the bank exists the fund may be drawn upon to make good deficiencies. Should the bank be wound up, it is to be handed over to trustees for suitable public employment."[3]

The reserve fund of societies of limited liability, holding deposits from non-members, should ordinarily be invested outside the movement. Where there are no deposits from non-members this is of less importance, and where there are no deposits at all the society has no liabilities and can use the reserve fund in its ordinary

1. Spicer and Pegler: Practical Auditing, 3rd Edn. p. 150 ff.

2. Co-operation in Agriculture, p. 268.

3. In Serbia, the reserve fund on dissolution is turned over to the Central Bank, Herrick, p. 40.

business. In societies of unlimited liability, the reserve fund may be used as ordinary working capital.[1]

The usual rule is to treat the reserve as indivisible. In a secondary society composed of primary societies as members, it may be divided amongst them on liquidation. In the ordinary social club the reserve fund (or surplus assets on liquidation) cannot be divided amongst the members.

The Committee regarded it as most advisable that there should be a building-up of reserve funds with the help of a large margin of interest.[2] Where there are no shares, this course should be adopted, but where there is a considerable share-capital, one-fourth of the profits earned by its employment must by law go to reserve and there is accordingly less need for a large margin of interest. It cannot too often be urged that co-operative effort aims at rendering the best possible service at the lowest possible rate. An accumulation of profits under

---

1. U. P. Rule 83 lays down that while ordinarily the reserve fund in a primary society with limited liability should be invested outside the society "the Registrar may permit a society which is entirely or substantially working with its own capital, to utilise a specified portion of its reserve fund in its own business."

2. Compare the following :—'It is not the object of peoples' banks to gather from their members more interest than is necessary to secure themselves an assured existence. They exist for the good of their borrowers' (Dupernex, p. 19). The Belgian law forbids the accumulation of indivisible reserve (Herrick, p. 305). There are co-operative banks which have rapidly grown strong by designedly charging members, with the members' consent, in early years a rather higher rate of interest on loans than would have been strictly necessary, for the sake of creating a fairly substantial reserve fund, which places a bank above danger and greatly increases confidence in it. That temporary trifling sacrifice has well repaid itself (Wolff, Co-operative Credit for the U. S., pp. 44-45). As time goes on the reserve fund is to serve as an endowment for the bank, become its capital,—capital of guarantee at first to attract other money ; afterwards also working capital so that in that case the ideal of some men (M. Luzatti among the number) would be realised, of a fund being in existence subject to collective ownership only and therefore permanent (Ibid., p. 127).

the name of a reserve fund becomes liable to objection if the sum is in excess of that required to ensure financial stability. But the result is much the same as if a member had to contribute to the share-capital in proportion to his borrowings. In the end, it is less a matter of principle than of practical expediency and experience inclines to favour the accumulation of a reserve in the earlier years, followed by a reduction of interest when the fund is sufficient to protect the unlimited liability and to secure financial stability.

Under the new French Law, 75 per cent of the net profits, after paying interest on the shares, must go to the reserve fund till it amounts to twice the share-capital and 50 per cent thereafter.

The Madras rules are as follows: —

IX (a) In societies with *shares and unlimited liability*, not less than one-half of the net profits shall be set apart as a reserve fund until that fund is equal to one-half of the total liabilities of the society other than reserve and share-capital.[1] When that proportion has been reached, not less than one-third of the net profits shall be added to the reserve fund, provided that if, by any increase in liabilities other than reserve and share-capital, the proportion of reserve fund to such liabilities is again reduced below one-half, the share of the net profits to be credited to the reserve fund shall be raised to one-half until the portion is restored.[2] The balance of the net profits, after one-half or one-third has been credited to the reserve as above provided,

1. Mr. Wolff would approve of this : no maximum should be fixed to the reserve fund, at any rate, proportioned to the share-capital. For it is not the amount of share-capital which comes into account in determining the proper figure for the reserve fund, but the volume of outstanding liabilities which there may be to meet. (Co-operative Credit for the U. S., p. 66).

2. Bengal also has this rule.

may be divided among the share-holders, subject to a maximum of 6¼ per cent per annum on the paid-up value of each share. No dividend shall be distributed without the previous sanction of the Registrar.[1]

In societies with *shares and limited liability*, not less than one-quarter of the net profits shall be carried to the reserve fund and the balance may be used in such manner and for such purposes as are prescribed by the by-laws of the society, (1) provided that no society shall pay dividend to its shareholders at a rate exceeding 9 per cent per annum on the paid-up value of each share or set apart more than 7½ per cent. of the net profits for a common good fund, and (2) provided also that any profits not allotted in the manner aforesaid shall forthwith be certified to the reserve fund. (Thrift societies are exempt from building up a reserve fund if they do not borrow from non-members nor lend to members).

(b) Societies with *shares and unlimited liability*, registered as urban societies under India Act X of 1904, may continue to divide profits in accordance with their by-laws as they stand at the present date; but they shall not increase the proportion of net profit to be divided among the members except in accordance with the foregoing provision.

(c) No bonus, which, when added to the dividend, brings the total of bonus and dividend above the maximum laid down in clauses (a) and (b) shall be allowed but in the case of societies with shares and unlimited liability, the Registrar may sanction the payment of honoraria, on a moderate scale, to the office bearers of the society.

---

1. Bengal Rule 93 (2) lays down that in every co-operative society with unlimited liability and without shares not less than three fourths of the net profits in any year shall be carried to the reserve fund.

(d) Should a society, whether with limited or unlimited liability, which is competent either under the Act or under the present rules to divide a part of its net profits among its members elect to appropriate such portion or part thereo: to a "common good fund," the purpose designated by the expression "common good" shall be clearly defined in the by-laws of the society and it shall not be other than a charitable purpose as defined in section 2 of the Charitable Endowments Act, 1890.

X. The reserve fund in a registered society shall be invested or deposited in one or more of the modes mentioned in section 32, sub-section (1) clauses (a), (b), (c) and (d) of the Act provided that when the reserve fund of a society exceeds 20 per cent of its working capital, the excess may, with the sanction of the Registrar, be used in its own business. Distributive societies may use the whole of the reserve fund in their business. Other provinces have:—All societies shall hold such percentage of their reserve funds in separate investment as the Registrar may from time to time prescribe.

Most provinces have a clear rule: The reserve fund shall be indivisible and no member shall have any claim to a specified share in it.

"Indivisible" here means amongst the members. Uttar Pradesh rule: "Provided that in the case of re-organisation of a society into two or more societies, the reserve fund of the parent society may, with the sanction of the Registrar, be distributed equitably with regard to the condition of each society to form the reserve fund of the new societies."

Generally all profits not divided under section 33 or 34 must go to reserve : in a limited liability society rule X (Madras) applies. In unlimited liability societies, it may be used as the Registrar directs (e g., in the business of the society). On dissolution it should be applied to discharging liabilities (after the enforcement in full of

the liability of the individual members—Central Provinces), repayment of share-capital paid up, and, if for any period no dividend has been paid from profits, to the payment of a dividend for such period at a rate not exceeding 10 per cent per annum.

The balance should be applied to such local object of public utility as may be selected by the Committee and approved of by the Registrar. If within three months of the dissolution of the society the Committee fails to make any selection that is approved of by the Registrar, the latter shall either credit the above-mentioned portion of the reserve fund to the Co-operative Society, if any, to which the society is affiliated, or shall place the amount on deposit in some co-operative or other bank until a new Co-operative Society with similar area of operations is registered, in which event it shall be credited to the reserve fund of such society (Rules of the Punjab, Uttar Pradesh and Central Provinces).

Madras, however, allows the Registrar, as an alternative, to use this balance in supporting Co-operative Societies in the neighbourhood.

The English model rules allow 5 per cent interest on share-capital, and the balance of profits must go to the reserve fund until this equals the share-capital. Thereafter 5 per cent of the profits may be paid to the workers employed by the society and the remainder (in non-credit societies) may be distributed amongst members on the Rochdale plan. In credit societies all surplus profits go to an indivisible reserve fund.

As to the employment of the reserve fund, there is some diversity of opinion. Its first function is of course to cover bad debts. Bombay has a rule:—Bad debts may be written off against the reserve fund of any society, and, in the case of limited liability societies, if the bad debts exceed the reserve fund, the balance

remaining may be written off against the share-capital of the society.

Provided that (i) no bad debts shall be written off without the sanction of a general meeting, (ii) before any such debts are so written off, the society, if it is affiliated and indebted to a Central Bank, shall obtain the approval of that Central Bank in writing, which approval shall be given after consultation with the Assistant Registrar, and shall be countersigned by him. If the society is not so affiliated, or if the society is so affiliated and is not indebted to the Central Bank, it shall first obtain the approval of the Assistant Registrar in writing, and (iii) if the society itself is a Central Bank, the approval of the Provincial Co-operative Bank, given in consultation with and countersigned by the Registrar, shall first be obtained.

The Maclagan Committee recommended that primary societies should be allowed to use their reserve fund in their own business. The Central Provinces would put all reserve funds at the disposal of the Central Banks to serve as fluid resource to the whole movement. Bengal prefers that the reserve funds should be invested through Central Banks in a readily realisable form and as far as possible outside the co-operative movement. Madras does not think it desirable that primary societies should be allowed to use their reserve funds in their ordinary business. Their reserve constitutes their only item of fluid resource and is lodged with Central Banks, which are in a position to return it, in whole or in part, to the primary societies at a moment's notice: the continuance of this state of things seem essential as a means of enabling primary societies to meet unexpectedly heavy demands and also as a means of providing a readily available asset in the event of their insolvency[1].

1. Cf. Opinions published in the Gazette of India.

Where the reserve fund is but a fraction of the total liabilities it must be carefully preserved: where it amounts to a large proportion of the total liabilities there can be little objection to its free employment as working capital.

The Madras Committee, therefore, recommended that where the reserve fund of primary societies exceeds 20 per cent of their working capital, any excess may be used by societies in their own business. The new rule has been reproduced above.[1]

The writer of this book has repeatedly requested defenders of this attitude to take pencil and paper and show how the position of the primary credit society is in any way strengthened or improved by refusing to allow it to use its reserves in its own business. The above rule seems to him merely a device to enable the financing bank to make money at the primary society's expense. He has never heard from any source a single

1. The Reserve Bank has directed that the reserve fund of primary co-operative societies and central co-operative banks should be invested outside their business until such time as their statutory reserve funds were equal to their paid-up share capital. Thereafter the surplus might be utilised in the business of the respective institutions. In the case of primary credit societies the reserve fund should be invested in the central co-operative bank to which they are affiliated. In the case of central co-operative banks it should be invested in the State co-operative bank to the extent of at least 50 per cent, the surplus being invested in Government or Trustee securities. At the apex bank level reserve fund should be invested outside securities."

(Circular letter No. ACD. 3088 dated 18th April, 1956).

Darling has observed that the investment of reserve funds of primary societies in their own business in undivided Punjab "facilitated the building up of their own funds and in doing so it helped to protect their members against the risks of unlimited liability. Moreover, in making societies more dependant on their own resources, it tended to make them less dependent on others." He has further suggested that if the reserve fund has to be invested in the Central bank so as to be available in an emergency, it should not be employed by the bank in its own business but kept in some liquid form, the total amount to be in addition to the fluid resource to cover ordinary deposits.

sound argument in its favour. Bombay has a rule: The reserve fund of any registered society may be utilised in the business of the society or be invested or deposited. The Registrar may, for reasons to be communicated in writing to the society, by general or special order, direct that the fund be deposited or invested. The Indian Central Banking Enquiry Committee wrote that it was safer to keep the reserve fund invested in the Central Banks and not to permit the societies to lend it to their members. The opinion might have carried more weight if the Committee had illustrated it by specimen balance-sheets of a society at, say, ten-yearly intervals.

The *object* of the reserve fund must not be illegal, otherwise the society may be cancelled (English Acts). Any allocation of this fund to objects not specified in the by-laws would be illegal. For instance it should not be applied to political or purely religious purposes, such as a home for decrepit cows.

(q) prescribe the extent to which a society may limit the number of its members ;

In Germany, Belgium, Austria, Italy,[1] Greece, California,[2] Alberta, etc., the law only applies to Co-operative Societies which do not limit the number of their members[3] and it is very important that Government should have the power to make rules to prevent societies from becoming close corporations for the benefit of a few individuals, who may develop into pure

---

1. Societies may prescribe conditions for the admission of new members, they may not absolutely veto such admission by fixing on a certain number which may not be exceeded (Monographs II, p. 128).

2. Powell, p. 47.

3. Japan seems to be exceptional as its law allows a society to limit the number of members. Herrick, p. 434.

dividend hunters. It is a condition of the enjoyment of concessions from the State that they be open to all. For instance, English stores societies would become liable to income-tax if they limited the number of their members. They adhere to the old principle that the share-list shall never be closed.[1] A Co-operative Society which does not care to receive new members, but prefers to make profit at the expense of outsiders, is a Co-operative Society in name only. The principle of free admission to a Co-operative Society for all willing to join is characteristic. It would be considered directly contrary to the idea of co-operation if a society were to fix in its statutes the number of members so that it would be impossible to increase them.[2] The true Co-operative Society is open to all who have the qualifications—no one is to be excluded because he is a big farmer or a little farmer or a tenant farmer or for any other reason. The membership must not be exclusive. It must be democratic. It cannot take in a certain group and leave another group out, provided they all have the same needs to be met.[3] No *bonafide* applicant of good character resident within the area of its operations should be refused admission.[4] There is a certain temptation, when a society is prospering as the result of a few men's work, to exclude new-comers in order that they may have no share in the profits—but there can be no worse abuse than this of the co-operative principle.[5] The above quotations make it clear that no arbitrary limit should be permitted to the number of members and the first (1906) and second (1907) conferences of Registrars adopted this view.

1. Cf. Schloss on Industrial Co-operation, p. 347.
2. Co-operation in Finland, p. 18.
3. American Commission. Observations, Part I, p. 20.
4. Smith Gordon, Co-operation for Farmers, p. 8.
5. Ibid., p. 75.

The Committee also refrained from suggesting a definite numerical maximum but thought that a society is apt to become unmanageable if its members exceed a total that might vary from 50 to 100.[1] Unfortunately this very important principle that co-operation must be open to all has sometimes been overlooked. The Bengal and Central Provinces model by-laws, restrict the number of members in a credit society to 50, which is not to be exceeded without the written sanction of the Registrar. The Bombay rules (1918) prescribed that a credit society *shall* make a by-law in respect of the maximum number of members that may be admitted but this was soon abandoned.[2] It, however, still requires a by-law to be framed fixing the maximum number of members that may be admitted (1927). In many Central Banks a limit has been imposed to the number of shareholders with the result that the new societies sometimes cannot obtain a share. So long as the number of shares is not limited, their value cannot go above *par*, the dividend is automatically kept down to a rate approximating to the interest rate on deposits and members do not regard the reserve fund as their property. Restrict shares, and therefore membership, and all these evils follow. There should be one general rule. No society shall fix any limit to the number of its members. And to this there might be the single exception permitting Central Banks to limit the number of individual members. But Bengal has a rule imposing a limit of 50 in the case of societies with unlimited liability, without the sanction

1. The average for rural credit societies in other countries in 1937 was Germany, 94; India, 41; United Kingdom, 84; Japan, 105; Russia, 76; Austria, 130; Italy, 40 to 60; Finland, 40 to 50. The average membership per agricultural credit society in India in 1954-5 was 48, in Madras 103, Travancore-Cochin 165, and in the remaining States it was below 100.

2. See Annual Report for 1919, para 14. It has been found unworkable and has been definitely abandoned.

of the Registrar. The number of members may be restricted:—

(1) by the conditions imposed in section 6, i.e., by the exclusion of certain classes or descriptions of people;

(2) by careful selection of applicants for election, but a mere desire for exclusiveness must be no ground for rejection;

(3) by fixing a minimum number of shares to be taken up or (in a trading society) a minimum amount of purchases to be made,

The most satisfactory method of preventing a society from becoming too unwieldy is to restrict the area from which members may be drawn.[1]

The question is of importance in the case of credit societies where mutual personal knowledge is essential; but large membership is not generally regarded as a draw-back in other societies such as stores and supply societies.

---

1. Under the Second Five Year Plan it is proposed to organise large-sized credit societies with limited liability serving groups of villages having a membership of 500, a minimum share capital of about Rs. 15,000 and a total annual business of about Rs. 1·5 lakhs. Commenting on this proposal Sir Malcolm Darling has observed:— "For an urban or semi-urban bank where the co-operative spirit counts for little and business convenience for much, larger numbers may be desirable but if the ordinary village thrift and credit society is to be truly co-operative then 500 seems to be excessive. I am fortified in this opinion by the fact that in 1955 the average for West Germany's 11,000 village banks was 155 and for Switzerland's 1,000 only 110. Indeed two-thirds of the latter had less than this." (Report on certain aspects of the Co-operative Movement in India, p. 10).

The Second conference of State Ministers on Co-operation held in July 1956 recommended that while the principle of State partnership and financial assistance for the managerial staff will be extended only to large size co-operative societies, "the formation of smaller societies at village level with fair prospects of functioning as effective units may be permitted consistently with main programme. Small societies should, however, continue to receive financial and other assistance as at present and should also be strengthened."

(r) prescribe the conditions under which profits may be distributed to the members of a society with unlimited liability and the maximum rate of dividend which may be paid by societies ;

Distribution of profits in unlimited liability societies— This is to enable Government to check any profit-seeking tendency.[1] Raiffeisen was opposed to any division of profits by way of dividend and under this clause Government can by rule prevent shareholders from dividing amongst themselves the surplus which should be employed in cheapening the services performed by the society. The general rule (section 33) is that a society with unlimited liability should not distribute profits among its members. Under section 8 of the former Act no rural society could distribute profits until the reserve fund had attained certain proportions and the rate of interest had been reduced to an extent determined by rules or by-laws. The Government of India did not intend that profits of a society should be divided except where there are shares. Under the Friendly Societies Act, societies with unlimited liability may not distribute profits so long as they receive deposits from non-members.

In the Punjab, societies of the old type can pay a dividend after 11 years., but the general tendency is to make profits indivisible. In Bengal, in societies with shares and unlimited liability, a dividend can, with the sanction of the Registrar, be distributed on shares up to

1. The Law of Nebraska (U.S.A.) defines a co-operative association as one which authorises the distribution of its earnings in part or wholly, on the basis of, or in proportion to, the amount of property bought from, or sold to, the members, or of labour performed, or other service rendered to the corporation (Powell, p. 46).

a maximum of $9\frac{3}{8}$ per cent of the paid-up portion. In Uttar Pradesh such a distribution can only be made after ten years and on fully paid-up shares.

Maximum rate of dividend:—As profit-seeking is to be avoided, there is a general consensus of opinion in favour of a strict limitation of the dividend. Mr. Wolff writes: Unlimited liability forms a temptation to the allowance of a large dividend to capital It has become very general and is answerable for a great deal of bad practice. The co-operative principle is that capital should receive exactly the interest which is usual for it in the market and no more so that a maximum is fixed... There must be only one interest in the bank and that the consumers...Co-operative institutions belie their own character and object in allowing profit beyond the current rate of interest to capital......

The Committee held that in all ordinary cases a maximum limit should be fixed so as to prevent the neglect of co-operation in favour of individual profit. The maximum suggested was the ordinary rate charged by a society on its loans. In the case of Central Banks it might be two or three per cent over the rate paid on deposits.[1] The Committee would have adhered more closely to established precedent if they had advised that the dividend in primary societies should not exceed the rate paid on deposits. In England, the maximum divi-

1. The Government of India have approved of this.

dend on capital (usually called interest) is now generally five per cent.[1]

The Sixth Conference of Registrars recorded the opinion that dividends should be limited by rule of the Local Government, so as to strengthen the hands of the Registrar. This has been adopted. Burma allows 20 per cent, Bihar and Orissa 12½, the Punjab 10, Coorg 10, Madras 9.[2] Bombay in its new Act fixes the maximum at 10 percent. But it omits the restriction on a bonus and a bonus is not uncommon. Uttar Pradesh limit it to 10 per cent on the share-capital actually paid up, provided that if in a District or Central Bank the accumulated reserve fund exceeds one-quarter of the nominal share-capital of the bank at the time, this limit may be raised to 12 per cent by special order of the Registrar. In Bengal, in limited liability societies, a dividend of 12½ per cent on the amount paid up is allowed, but the Registrar can sanction more than this. In some provinces (Burma and Madras) the by-laws of

1. Bombay Rule 24 lays down that no Consumers', Producers' or Housing Society shall pay dividend exceeding 6¼ per cent on paid up shares. If the society is unable to pay at this rate in any year it may make good the deficit by paying the difference out of profits in future years. No Resource or General Society shall without the previous permission of the Registrar pay dividend exceeding 7½ per cent. Such society may credit in any year a sum not exceeding 2 per cent on the paid up share capital to a fund called the Dividend Equalisation Fund until the total amount in such Fund amounts to 7½ per cent of the paid up share capital. This Fund is mainly to be utilised for payment of dividend.

2. Madras Rule 12(a) fixes the maximum of the rate of dividend payable in different classes of societies... (1) Madras State Co-operative Bank—9 per cent per annum on the paid up value of each share. (2) Other financing banks—5 per cent (excluding preference shares) (3) Other societies with limited liability—6¼ per cent (4) Society with share and on unlimited liability basis—6¼ per cent. In Bengal (Rule 95) Co-operative society with shares may declare dividend upto 9 per cent but no dividend shall be paid by a society with shares and unlimited liability without the previous sanction of the Registrar.

a few central banks contain provision for payment of dividends to individual share-holders in preference to or at a higher rate than society share-holders. Where the former retain full voting power for the election of the directorate, this distinction finds little support amongst good co-operators but where they have lost control owing to the growing voting power of society-members it may be less objectionable to treat them as preference share-holders. The French law of 1894 relating to Societies of Credit Agricole prescribes that after paying expenses and interest on loans and capital, three-fourths of the profits shall go to reserve and the balance shall be divided between the agricultural associations and between their members in proportion to the profits derived from their respective operations. It shall not in any case, be divided in the form of a dividend between the members of the society. As Sir F. Nicholson remarks this is the original Rochdale principle. The Rochdale Pioneer's rules were that the share-capital should bear a fixed rate of interest and profits should be divided pro rata upon the amount of the purchases made by each member (market-prices being charged originally). This is now known as the patronage rule.[1] In England what is allowed on capital is called interest and not dividend. This latter term is used to refer to the rebate granted to purchasers. The English Congress (1903) resolved that abnormally high dividends are injurious to the progress of the co-operative move-

1. Under Madras Rule 12(c) a society other than a credit society (such as a Co-operative Stores, Weavers' Society etc) may pay, in accordance with its by-laws, bonus to its members based on the extent of business done by those members with it subject to a maximum of 25 per cent of the net profits. In U. P. (Rule 81) bonus may be distributed with sanction of the Registrar (i) in a society the principal business of which is production or distribution (ii) to members on their non-credit dealings with the society and (iii) to the extent of half the profits available for distribution.

ment, as the payment of such dividends involves the charging of high prices, which has a tendency to diminish trade and to exclude from the benefits of co-operation those for whom its advantages are chiefly intended. puts the maximum at half a crown in the pound or 12½ per cent. The resolution with necessary verbal changes applies to credit societies. This difference between interest on capital and the bonus to members is important. The latter is not assessable to income-tax but the former should be (and in England is so).

The English and Irish model rules for agricultural societies allow five per cent on share-capital: thereafter half profits go to reserve until this equals the share-capital: then five per cent as a bonus to employees and the balance may be distributed to members in proportion to their transactions.

Roumania allows dividends on capital not exceeding 15 per cent in the peoples' banks and ten per cent in other Co-operative Societies.

The distribution of profits requires care. The English Acts insist that the rules shall provide for the profits being appropriated to any purpose stated therein or determined in such manner as the rules direct. The purpose must not be illegal. A dividend should only be declared by a society in general meeting and no dividend should exceed the amount recommended by the Directors or Managing Committee. *Interim* dividends should not be allowed. No dividend should be paid otherwise than out of profits actually realised. (But there may be a special reserve set apart for equalising dividends).

The Madras Committee considered that if the dividend of a Central Bank in any year falls below the maximum, the shortage may be made up in subsequent years when the profits allow as an incentive to the collection of overdue interest.

Bombay has a rule:—

Without the sanction of the Registrar no part of the funds of a registered society shall be divided by way of bonus or dividend or otherwise among its members in any case in which the entire expenditure incurred by such society during the year has not been debited in the Annual Profit and Loss Account before the net profit was arrived at.

In Uttar Pradesh there is a rule:—All overdue interest should generally be excluded for the purpose of reckoning profits for distribution among shareholders, but in the case of Central Societies the Registrar may, in special cases, permit an exemption from this rule in favour of preference shareholders, when he considers such a course justified or desirable. In Madras, the Registrar can certify what "net profits" are. In some provinces, the balance-sheet has to be approved by him or some one authorised by him. In Assam, it is prescribed that: All Co-operative Banks or Societies shall be required to make such provisions for bad and doubtful debts as may be required by the Registrar, or some person duly authorised by him, before any dividend may be declared.

Unless such provision has been made, or a special exemption (which may be subject to conditions) has been granted by the Registrar or some other person authorised by him in that behalf, no Co-operative Bank or Society shall take into account unrealised overdue interest for the purpose of payment of dividend, or for the purpose of declaring profits.

Bombay has a rule:—In calculating the profits of a society for the year, for the purpose of declaring a dividend or bonus, all accrued interest which has been unauthorisedly overdue for more than six months shall be deducted from the gross profits of the year before the net profits are arrived at. All accrued interest, that has

been so deducted from the profits of the year and is actually recovered during the subsequent year, may be added to the profits of the subsequent year.

(s) subject to the provisions of section 39 determine in what cases an appeal shall lie from the orders of the Registrar and prescribe the procedure to be followed in presenting and disposing of such appeals; and

An appeal from an order cancelling the registration of a society lies to the Financial Commissioner in the Punjab and elsewhere. In Bombay and Madras where the Registrar refused to register a society or refuses approval to the making, alteration or abrogation of any by-law, an appeal may be made to the Government within two months of the date of the communication of the order. Generally no provision has yet been made for any other appeal except under the Bombay Act. But

the Madras Act allows for appeals to the Registrar from orders of a liquidator.[1]

(t) prescribe the procedure to be followed by a liquidator appointed under section 42, and the cases in which an appeal shall lie from the order of such liquidator.

Madras incorporates its old rules as a substantive section (47) of the Act (cf. Appendix).

Most provinces have now complete rules, on the following lines:—

---

1. The Bengal Act provides for appeal to the State Government against the orders of the Registrar in the following cases also:—(a) order of disqualification under sec. 25 or order dissolving a Managing Committee under sec. 26; (b) order for apportionment of costs under sec. 85; (c) order decision or award of the Registrar or arbitrator if passed by the Registrar under sec. 87, 88 or 89. Appeal to the District Judge will lie against order under 127 or 129.

Under sec. 56 of the Bombay Act any person aggrieved by an order of the Registrar or his nominee under sec. 54, 54A (5) or 55 may within two months from the date of order appeal to the Bombay Co-operative Tribunal constituted by the State Government under sec. 53A. This Tribunal shall consist of three members. The President will be a retired Judge and of the two other non-official members one should be a lawyer of 10 years' standing. It shall make rules for regulating its procedure. It may call for and examine the record of any proceedings in which an appeal lies to it for satisfying itself as to the legality or propriety of any order passed. With a view to prevent ends of justice being defeated the Tribunal may pass such interlocutory orders pending the decision of the appeal as may, appear to it to be just. An order passed by it in appeal or in revision shall be final and shall not be liable to be called in question in any civil or revenue court.

Under Sec. 64A of the Bombay Act the State Government and the Registrar have been empowered to call for and examine the record of any inquiry or the proceedings of any subordinate officer and to modify, annul or reverse any order passed by the subordinate officer if necessary. "The Government when exercising powers under this section exercises judicial and not administrative functions hence parties must be given a hearing. Failure to do this will render the order to be ultra vires the powers of the authority issuing the order" (Satyanarayana v Venkataramayya— A. I. R., 1947, Mad. 401).

(a) When the Registrar cancels the registration of a society he shall at once publish in the (provincial) Gazette and in such other manner as he may think proper, a notice requiring all claims against the dissolved society to be submitted to him or to such person as he may name in that behalf within one month of publication of the notice: liabilities recorded in the account books of a society shall be deemed ipso facto to have been duly notified.

Note:—Assam, Bengal, Bihar and Orissa have this rule. Other provinces do not insist upon a gazette notification but leave it to the liquidator to issue the notice for liabilities.

(b) When the registration of a society is cancelled under section 40 of the Act or when no appeal has been made under clause 2, section 39 of the same Act against the order of the Registrar under that section cancelling the registration of a society, or where such an appeal has been dismissed, the liquidator shall forthwith take charge of the books of the society (Burma, Bengal, U. P. following section 178 Companies Act, add : and all the property, effects and actionable claims to which the society is entitled) in order to take necessary steps to wind up its affairs.

Note.—A winding-up order has not the effect of vesting the society's property in the liquidator. The property remains in the society until dissolution, unless disposed of in course of winding-up.

Bombay has a rule enjoining the liquidator immediately on appointment to take charge of the books, property and assets.

(c) If necessary, the liquidator may institute suits for the recovery of sums due to the society.

(d) The liquidator shall then proceed to determine the assets and liabilities of the society as they stood on

the date of the cancellation of its registration: he shall next determine the contributions to be made by the members and past members of the society, respectively, to the assets of the society. He shall also determine by what persons and in what proportions the costs of the liquidation are to be borne.

The Madras Act empowers the liquidator to determine from time to time the contributions to be made or remaining to be made. This removes the difficulty as to whether the liquidator may issue further orders when his first distribution fails to bring in the assets.

The costs of liquidation include the remuneration of the liquidator, which has priority of all other claims.

Note, again, the omission of any reference to deceased members' estates. Uttar Pradesh add:—He shall draw up a formal order noting the amount to be realised from each member or past member as a contribution and as cost of liquidation. The legal representative of a member or past member shall be liable only to the extent of the property of such member or past member which has come to their hands as such. Bengal inserts a rule:—The interest on deposits from non-members and on loans shall run on the same rate as before from the date of liquidation to the date of refund or repayment of the principal.

The Madras Act includes nominees, heirs or legal representatives of deceased members.

(e) For the above purpose the liquidator may issue summonses to persons whose attendance is required either to give evidence or to produce documents He may compel the attendance of any person to whom a summons has been issued and for that purpose issue a warrant for his arrest.

Note:—A liquidator should also have power to call general meetings from time to time.

This power to summons extends not only to member-defaulters but also to their sureties, including non-members.

The Madras Act empowers the liquidator to compel the production of any books, accounts, documents, securities, cash or other properties belonging to or in the custody of the society.

(f) The liquidator shall send all such notices, summonses or warrants for service to the District or Subdivisional Officer concerned.

(g) The District or Subdivisional Officer, upon receipt thereof, shall proceed as if such notices, summonses or warrants had been issued by him and shall return them to the liquidator with the record (if any) of the proceedings taken with regard thereto.

Note:—Most Local Governments appear to agree that, on the cancellation of a society's registration, the liquidator should be empowered to recover the outstandings by summary procedure, and special legislation to this end has been enacted in several provinces (see notes to section 42)—accordingly in Uttar Pradesh there is a rule:—The Registrar may refer a copy of the order passed by the liquidator as finally approved by him to the collector of the district and make a requisition to that officer to recover the amounts noted in it in the same manner as arrears of land revenue. Bengal, Bihar and Orissa, etc., have a similar rule adapted to local conditions.

(h) The liquidator shall keep short notes of the depositions of the persons thus summoned to give evidence.

(i) The liquidator shall then make an order noting the names of members and past members of the society and the amount to be realised from each as contributions under clause (b), sub-section (2) of section 42, and as costs of liquidation under clause (d) of the same sub-section.

Note:—In Uttar Pradesh, the Registrar may issue instructions laying down the principles on which and the

manner in which the contributions shall be determined, and the liquidator shall act according to these instructions. Any persons affected by an order passed by the liquidator may make a representation to the Registrar, who may then pass such orders as he thinks fit.

(j) This order together with all papers connected with the liquidation shall be submitted to the Registrar for his approval, and he may, if he thinks fit, modify the order or refer it again to the liquidator for further enquiry or other action.

Note:—In Uttar Pradesh, the liquidator with the order must submit a list of the property of each member and past member and of the assets of the deceased members and past members.

The liquidator of a company is subject to the control of the Court here and in rules (m) and (o) he is subject to the control of the Registrar, who performs many of the functions of the Court.

(k) A copy of the above order as finally approved by the Registrar, accompanied, if necessary, by a list of the property of each member or past member against whom the decree will have to be enforced, shall be filed in the Civil Court, having local jurisdiction, be enforced as laid down in clause (a), sub-section (5) of section 42.

Note:—It should be stamped as an application for execution (U. P. Manual, p. 30).

The Bombay Act, section 50 (b), and the Uttar Pradesh Rules empower a liquidator to compromise the claims of or against the society with the sanction of the Registrar.

(l) If the Civil Court is unable under the above order to recover the sums assessed against any member or members, the liquidator may frame a subsidiary order or orders against any other member or members up to the extent of the liability of each for the debts of the society. This subsidiary order or these subsidiary

orders, as finally approved by the Registrar, shall be filed in the Civil Court having local jurisdiction for enforcement until the whole amount due from the members is realised.

Note:—As an alternative to the Civil Courts, Provinces, which have enacted special legislation for summary recovery, have rules permitting resort to the certificate officer under the Public Demands Recovery Act.

(m) The liquidator shall submit to the Registrar a quarterly report in such form as the Registrar may prescribe, showing the progress made in the liquidation of the societies placed under his charge.

Note:—The liquidator should maintain books recording his actions so as to comply with this rule and that in clause (o) below. In Uttar Pradesh the Registrar may prescribe the books and cause them to be audited.

(n) All funds in charge of the liquidator should be kept and deposited in the Post Office Savings Bank or with such other bank or person as may be approved of by the Registrar.

Note:—These funds should stand in the liquidator's name.

(o) After recovery of the dues of the society and the realisation of the contribution and costs of liquidation from the member and past members, the liquidator shall, after meeting the liabilities of the society, wind up the affairs of the society and submit a final report to the Registrar.

Some provinces add :—

(p) The appointment of a liquidator shall be published in the (provincial) Gazette.

(q) No appeal shall lie from any order of the liquidator under section 42.

Madras allows an appeal to the Registrar.

The Registrar shall fix the amount of the fee to be paid to the liquidator.

This fee shall be included in the costs of liquidation, which shall be payable out of the assets of the society in priority to all other claims. Bombay has a rule that when recovery is made by village officers, the liquidator may pay to such officers remuneration at the rate of one per cent of the amount collected by such officers.

At the conclusion of the liquidation a general meeting of the dissolved society shall be called at which the liquidator shall summarise the results of his proceedings, shall point out the causes of the failure of the society and shall take a vote as to the disposal of any cash balance that may remain with him.

A liquidator may at any time be removed by the Registrar, and he shall, on such removal, be bound to hand over all the property and documents relating to the liquidation to such person as the Registrar may direct.

Bombay has incorporated the most important rules in its new Act (see Appendix) but has rules in amplification as well. It prescribes that the books, etc., shall be destroyed by the Assistant Registrar after the expiry of two years from the date of the order cancelling registration.

(3) The Local Government may delegate, subject to such conditions, if any, as it thinks fit, all or any of its powers to make rules under this section to any authority specified in the order of delegation.

(4) The power to make rules conferred by this section is subject to the condition of the rules being made after previous publication.

For provision applying to such a condition see General Clauses Act, section 23. The authority must publish a draft in such manner as the authority deems to be sufficient, and with it a notice specifying a date on or after which the draft will be taken into consideration: it shall consider any objection or suggestion which may be received before the date so specified. Publication in the Gazette of a rule, purporting to have been made in exercise of a power to make rules after previous publication, shall be conclusive proof that the rule has been duly made.

(5) All rules made under this section shall be published in the local official Gazette and on such publication shall have effect as if enacted in this Act.

In Uttar Pradesh power to make rules under section 43 (2), clauses (h) and (i) has been delegated to the Registrar. So also in the Punjab, where he can in addition make rules under clause (o) prescribing for any society the maximum loan which may be made to any member without his prior consent. These delegations save no time owing to the necessity for following the procedure under clause (4) above and so Madras omits clause (3). Madras has an additional clause :—All such rules shall be laid on the table of the Legislative Council.

Miscellaneous.

44. (1) All sums due from a registered society or from an officer or member or past member of a registered society as such to the Government including any costs awarded to the Government under section 37,

may be recovered in the same manner as arrears of land-revenue.

Burma has "shall" for "may"

(2) Sums due from a registered society to Government and recoverable under sub-section (1) may be recovered, *firstly*, from the property of the society; *secondly*, in the case of a society of which the liability of the members is limited, from the members subject to the limit of their liability; and *thirdly*, in the case of other societies, from the members.

Burma applies this provision also to sums payable by order of a Liquidator, on a requisition being made by the Registrar to the Collector: and further empowers Government to frame rules prescribing the remuneration which shall be payable to Headman or others employed to collect these sums which are recoverable in the same manner as arrears of land-revenue.

In order to stimulate the movement originally it was decided that Government should provide a part of the capital of new societies. The loans were repayable in instalments and this section primarily refers to these. It applied the takkavi rules to these loans. It will be noted that as an exception in favour of the crown, proceedings may be taken against the members without the society being wound up.

Under this section the costs of audit by a Government auditor may be recovered.

Query: Cannot the sums be recovered from past members?

Bombay adds the words "or past members" subject to the provisions as t twoo years in section 23 and

Madras in clause (1) adds: former officer...or deceased member, and in clause (2) adds: or the estates of deceased members. In both cases the liability is subject to sections 23 and 24 of this Act (Combined as section 25 of the Madras Act)

Power to exempt societies from conditions as to registration.

45. Notwithstanding anything contained in this Act, the Local Government may, by special order in each case and subject to such conditions, if any, as it may impose, exempt any society from any of the requirements of this Act as to registration.

If the society were not registered it would not be a corporate body or enjoy the exemptions under section 28.

This section and the next following are thus explained in the Government of India resolution: It was impossible to frame any set of general provisions which should cover all conceivable forms in which the principle of co-operation might usefully be applied for the benefit of small folk in India...It was impossible to provide for all eventualities...a general section has, therefore, been added which provided that the Local Government may permit any association whatever to be registered as a society under the Act, and may exempt any society thus specially registered from any of its provisions or may modify any of those provisions in their application to any such society. The position, therefore, stands as follows:—

In the body of the Act have been included those provisions which it is believed will be suitable to the type of Co-operative Societies that is most likely to come into existence in this country, and these provisions will constitute the normal law, which will apply of its own force to these societies in general. But a Local

Government will have an absolutely free hand to depart from or vary them, on condition only that it does so by special order in each case and after full consideration of the circumstances which justify the departure. Of course, it is intended that this power should be exercised only on behalf of societies the aims of which are consonant with the objects which the Act is intended to promote.

Power to exempt registered societies from provisions of the Act.

46. The Local Government may, by general or special order, exempt any registered society from any of the provisions of this Act or may direct that such provisions shall apply to such society with such modifications as may be specified in the order.

E.g. the restrictions as to shareholdings in section 5 (under which examples are given).

Unlike section 45 above, this section applies only to societies which have been registered. Bombay has the words "society or class of societies" and adds: provided that no order to the prejudice of any society shall be passed without an opportunity being given to such society to represent its case.

The Committee consider that this power may be used where difficulty is experienced in raising sufficient share capital for central banks.

It may also exempt any registered society from the exemption as to income-tax (section 28) and should do this if a central bank for instance puts profit-making before its real object of facilitating the working of co-operative Societies or if a society deals with non-members, or limits unduly the number of its members (cf section 42 (q)

Bombay supplies the instance of the Sanikatta Salt Workers' Society.

It may also modify the restriction as to residence in section 6 (1) (a).

Punjab examples are exemption of Thrift Societies from section 33, and of an old regimental society from the obligation to put by 25 per cent of profits to reserve.

Prohibition of the use of the word "Co-operative"

47. (1) No person other than a registered society shall trade or carry on business under any name or title of which the word "Co-operative" is part without the sanction of Local Government.

Provided that nothing in this section apply to the use by any person or his successor in interest of any name or title under which he traded or carried on business at the date on which this Act comes into operation.

Date : 1st March, 1912. The Punjab Co-operative Bank Ltd., was registered before this date and has nothing to do with co-operation or the co-operative movement.

Bombay and Burma repeat this word and so postpone the date to 1925 and 1927 respectively, but Madras avoids this pitfall by a reference to the Act of 1912.

There are, unfortunately, several instances of Registrars of Joint Stock Companies in different provinces overlooking this section and registering ordinary companies with the word "co-operative" included in the name.

The South African Acts of 1922 and 1924 compel all previously existing institutions to register under the new Act or omit the word "co-operative".

(2) Whoever contravenes the provisions of this section shall be punishable with fine which may extend to fifty rupees and in the case of a continuing offence with further fine of five rupees for each day on which the offence is continued after conviction therefor.

This is the only penal section provided for carrying out the provision of the Act and is directed against non-co-operators.

The word "co-operative" has been grossly misused in America, and many failures of poorly managed private joint-stock enterprises have been charged against the co-operative method, to its discredit of course. Every State should have a law prohibiting the use of the word 'co-operative' in the name of any legal corporation unless that corporation is organised in conformity with these characteristic essentials of the Co-operative Society.[1]

48. The provisions of the Indian Companies Act, 1882, shall not apply to registered societies.

Indian Companies Act, 1882, not to apply.

This is the basis of the whole Act. The Companies Act is primarily a law governing organisations for pecuniary profit: it is designed to meet the needs of capital. In the early days, the Companies Acts of various countries were the only Acts under which Co-operative Societies could obtain a legal status. As the number of societies increased, the law had to be altered to meet their requirements, and, in order to confine the new enactments to the societies it became

1. American Commission. Observations, Part I, p. 22.

necessary to attempt legal definitions of Co-operative Societies, some of which have been given in the first part of this book.

But the Co-operative Societies Act is largely based upon the Indian Companies Act, giving generally the powers of a Court to the Registrar. See notes to section 4, post. The Indian Companies Act applies to all companies, associations, or partnerships for banking or acquisition of gain of 10 and 20 members respectively unless they are registered under this Act.

For Indian Companies Act, 1882, now read Indian Companies Act, 1913,[1] as corrected by Bombay, Burma and Madras Acts.

'The elaborate provisions of the Companies Act, however necessary in the case of combinations of capital on a large scale, are wholly unsuited to societies of the kind it is desired to encourage. The first thing to be done (in starting Co-operative Societies) was to take them out of the operation of the general law on the subject and to substitute provisions specially adapted to their constitution and objects (Government of India)'.

Exemption from the Companies Act carries with it exemption from payment of fees for registering various documents, balance-sheet, etc. The exemption does not extend to Co-operative Societies not registered under this Act.

Saving of existing societies.

49. Every society now existing which has been registered under the Co-operative Credit Societies Act, 1904, shall be deemed to be registered under this Act, and its by-laws shall, so far as the same are not in-

1. The Indian Companies Act was amended in 1956. Wisconsin and New York have adopted this.

consistent with the express provisions of this Act, continue in force until altered or rescinded.

Local Acts have to add: or under the Co-operative Societies Act, 1912. Madras adds a clause (2): All appointments, rules and orders made, notifications and notices issued and suits and other proceedings instituted under the said Acts shall, so far as may be, be deemed to have been respectively made, issued and instituted under this Act.

50. The Co-operative Societies Act, 1904, is hereby repealed. Repeal.

The Bombay, Burma and Madras Acts, of course, repeal the present Act as well. By so doing the societies in these provinces have inadvertently lost the privilege of acquiring land under the Land Acquisition Act, but Madras has a section 64 which runs: All references to the Co-operative Societies Act, 1912, occurring in any enactment made by any authority in British India and for the time being in force in the Presidency of Madras shall, in its application to the said Presidency, be constructed as references to this Act.

MODEL CO-OPERATIVE SOCIETIES BILL 1957

In resolution No. 5-8/56-Co-op. I dated the 6th June 1956 the Government of India (Ministry of Food and Agriculture) stated that "The Co-operative movement is on the threshold of large scale expansion. Economic development of the country along democratic lines offers a vast field for the application of co-operative principles in its infinitely varying forms. The Rural Credit Survey Committee, has advocated the need for the reorganisation of co-operative institutions on the basis of State partnership. The existing legislation on co-operative societies has therefore to be examined in the light of these developments with a view to simplifying, rationalising and modernising the existing laws". The Government appointed a Committee to prepare a simple model of legislation to govern the working of Co-operative Societies in the States.

The following are the important features of the Model Bill which is based on Act II of 1912 and other State Acts:—

(1) In certain States the Cane Commissioner in respect of Canegrowers' Co-operatives and the Director of Industries in respect of industrial co-operatives have been vested with the powers of the Registrar but work independently of the latter. This is not desirable as for co-ordinated control and unified direction all co-operative financing agencies and societies financed by them should be kept under the administrative control of a single authority. It has therefore been provided in the Model Bill that persons on whom powers of the Registrar are conferred shall work subject to the general superintendence and control of the Registrar. With a view to lighten the burden on the Registrar and to promote increased decentralisation of power the State

Government has been authorised to confer necessary powers to Co-operative Officers subordinate to the Registrar.

(2) As the attainment of social justice is one of the objectives of the constitution, and co-operative societies enjoy several privileges from the State, no society should be registered which does not satisfy the requirements of the essential principles of social justice.

(3) Organisers of agricultural credit societies should be given the option whether their liability should be limited or not.

(4) Provision has been made for a simple procedure for amalgamation or division of Co-operative Societies.

(5) Provision has been made for the State Government to be a member of a Co-operative Society. Some marketing societies have to admit to membership merchants or traders who have business dealings with them so that any dispute between them and the society may be referred to the Registrar for disposal instead of to the Civil Court. Similarly minor students in schools have to be admitted as associate members of school co-operatives. Provision has therefore been made for "Nominal" and "Associate" members who shall not have the right to vote and who shall not have any share in the assets or profits of the society.

(6) The powers of the general body of a society have been defined and it has been laid down that the general meeting shall be held at least once a year.

(7) Provision has been made for the nomination by Government of not more than three members or one-third of the total number of members of the Committee of a Co-operative society which has received State aid in the form of contribution to the share capital, guarantee for the repayment of principal and payment of interest on debentures or loans etc.

(8) Provision has been made for direct as well as indirect partnership of the State in Co-operative Societies.

(9) The Rural Credit Survey Report has laid emphasis on the proper training of co-operative personnel and the Government of India have provided funds for this purpose in the Second Five Year Plan, but the primary responsibility should rest on the Co-operative Societies themselves. Provision has, therefore, been made for contribution to a Co-operative Education Fund.

(10) Provision has been made for loans to depositors on the security of their deposits.

(11) Act II of 1912 does not contain any provision regarding surcharge. Provision has been made in the Model Act for surcharge not only with regard to acts for which a person is criminally liable but also those which involve misapplication of the funds of a society contrary to the Act, rules or by-laws and acts which involve gross negligence resulting in loss to the society.

(12) Provision has been made for the settlement of disputes by compulsory reference to arbitration by Registrar and the jurisdiction of civil or other courts with regard to any such dispute has been barred. The Registrar has been authorised to refer the dispute to a single arbitrator and not to a panel.

(13) Act II of 1912 does not recognise the winding up of a society as the first stage before its dissolution and a liquidator is appointed when the registration of the society is cancelled. The order of cancellation does not become effective until after the expiry of the period of appeal hence the liquidator cannot take immediate charge of the properties or assets of the society and the committee may dissipate its assets during the interval. Provision has been made for empowering the Registrar to pass orders for winding up and appointment

of liquidator simultaneously. When the appeal is pending the liquidator may function as a trustee on behalf of the creditors and members. Liquidators have been authorised to effect compromises between creditors and members and the Society so as to expedite liquidation proceedings.

(14) In Madras, Andhra and Madhya Pradesh there are separate Co-operative Land Mortgage Acts but these banks are registered under the Co-operative Societies Act. In Mysore and West Bengal there are special chapters on Land Mortgage Banks in the State Co-operative Societies Acts. Similar provision has been made in the Model Act. It has been pointed out that "lands are not sufficiently valuable before the improvements are effected and on this basis the amount of finance which land mortgage banks can provide under their existing rules of valuation may often be inadequate. The need arises for some form of guarantee to cover the difference between the value before and after improvement. This guarantee can only come from Government : it will have to be for a specified period and cover the difference between the two values, viz., value before and after 'improvement.' Provision has been made for this in the Act. It has also been provided that legislation on fixation of ceiling on holdings shall not apply to land mortgage banks in respect of lands acquired in satisfaction of debts due to them.

(15) Provision has been made authorising the Registrar also to execute decrees, awards, etc. departmentally.

(16) Provision has been made authorising the Registrar to pass an order of attachment of property before judgment in any proceedings under the Act if there is an apprehension that the property may be disposed of.

(17) With a view to lighten the burden on the Registrar provision has been made to constitute a Tribunal to hear appeals against orders passed in arbitration proceedings.

(18) Provision has been made for appeals against an order refusing to admit any person as a member or expelling a member from the society.

(19) "We recognise that the Co-operative movement is essentially a democratic one and that nothing should be done which will impair its fundamental character. We have therefore invested the Registrar in the Model Bill, only with such powers as have been found necessary in practice in most of the States and which are already embodied in their statutes. In fact we have omitted certain powers, which at present are vested in some States in the Registrar but which are considered as militating against the popular character of the movement."[1] The powers of the Registrar which have been omitted relate to directions for amendment of by-laws, compulsory amalgamation of societies or removal of one or more members of the Committee of Management.

---

1. The Indian Co-operative Union representing non-official Co-operators, has condemned these recommendations as they will reduce Co-operatives to "little colonies of backward, ignorant and helpless people to be administered, controlled, supervised, audited, superseded, and dissolved by one single authority.—the Registrar", These will impede the development of Co-operation as a popular movement.

Summary of the Provisions in the Model Co-operative Societies Bill and the Model Rules.

I. Model Co-operative Societies Bill.

The following are the important provisions in the Model Co-operative Societies Bill.

(1) The State Government may appoint a person to be the Registrar of Co-operative societies for the state and may appoint other persons to assist him and confer on such persons all or any of the powers of the Registrar. The persons appointed to assist the Registrar shall exercise the powers conferred on them subject to the general superintendence and control of the Registrar.

(2) A co-operative credit society consisting mainly of agriculturists shall be registered with unlimited liability, unless otherwise directed by the state Government.

(3) For Registration as a co-operative society, the objects of the society must not only comply with the provisions of the Act and the rules, but should also be consistent with co-operative principles and with the principles of social justice. The society must also satisfy the requirements of sound business and have a reasonable chance of success.

(4) A society may, by an amendment of its by-laws, change the form or extent of its liability, provided that the members and creditors of the society are given an opportunity to withdraw their shares or deposits in the society.

(5) In registering an amendment to the By-laws of a co-operative society, the Registrar is to be satisfied that the proposed amendment is not contrary to the provisions of the Act and the rules and is not inconsistent with the principles of social justice.

(6) A society may transfer its assets and liabilities in whole or in part, to any other co-operative society or divide itself into two or more co-operative societies. Such amalgamation or division, however, can be effected after giving the members and creditors of the societies concerned an opportunity to withdraw their shares or deposits in them.

(7) A co-operative society shall admit as members only individuals who are competent to contract, any other co-operative society and the State Government. A society may also admit an individual as 'nominal' or 'associate' member. A nominal member shall not be entitled to any share in the assets or profits of the society.

(8) Every member of a co-operative society shall have one vote in the affairs of the society. But where the Government is a member of the society, each person nominated by the State Government or the Committee of the society shall have one vote. Voting by proxy will not be allowed.

(9) An individual member may hold shares in a co-operative society not exceeding rupees five thousand. The State Government may, by notification in the Official Gazette fix a higher maximum in special cases.

(10) A minor, or a person of an unsound mind, may acquire, by inheritance or otherwise, the shares of a deceased member in a co-operative society.

(11) The liability of the past member or the estate of a deceased member for the debts of a society shall continue for a period of two years from the date of his ceasing to be a member.

(12) A society shall convene at least once a year an annual general meeting for the approval of the programme of its activities for the coming year, for the election of the members of the committee, for the amendment of by-laws etc.

(13) The State Government shall have the right to nominate not more than three members or one-third of the total number of members of the committee of a co-operative society, whichever is less, where the Government has subscribed to its share capital or has guaranteed debentures issued by it or has guranteed the repayment of loans advanced to it.

(14) The Registrar may supersede the committee of a co-operative society, if he is satisfied that it is persistently negligent in the performance of the duties imposed on it by the Act and the by-laws. Before removing the committee, the Registrar will give an opportunity to it of being heard. In place of the committee removed, the Registrar may appoint a new committee consisting of one or more members of the society or appoint an administrator who may not be a member of the society.

(15) The new committee of a co-operative society, an administrator or a liquidator may apply to a Magistrate for securing records and property of the society which may have been withheld by the outgoing Committee.

(16) Any debt owing to a Co-operative Society by a member shall be a first charge upon the crops and other agricultural produce, cattle, fodder for cattle, agricultural or industrial implements, raw materials for manufacture and finished products belonging to a member. A member shall not transfer any property which is subject to a first charge of the society, except with its permisssion in writing. Any transfer of property made in contravention of these provisions will be void. The first charge shall be available as against a claim of the Government arising from any loans granted to a member under the Land Improvement Loans Act, 1883 or the Agriculturists Loans Act, 1884, after the grant of loans to him by the society.

(17) A member of a Co-operative Society may execute an agreement in favour of a society authorising his employer to deduct from his salary such amount as may be specified in the agreement and pay the amount so deducted towards the repayment of the loan taken by him from the Society.

(18) In addition to exemption from the Income-tax, registration and other fees which the co-operative societies at present enjoy, the State Government may exempt any class of co-operative societies from taxes on agricultural income, on sale or puchase of goods and on professions, trade, callings and employments.

(19) It shall be the duty of the State Government to encourage and promote the Co-operative Movement in the State. The State Government may subscribe directly to the share capital of a co-operative society. It shall, however, not be entitled to a dividend at a rate higher than that at which such dividend is payable to any other shareholder of the society.

(20) The State Government may contribute indirectly to the share capital of a co-operative society. For this purpose, it may provide moneys to an apex society which shall credit them to a fund to be called the 'Principal State Partnership Fund'. The Fund is to be utilised by the apex society for directly purchasing shares in its own name in Central co-operative societies affiliated to it or in providing moneys to a central co-operative society to enable the latter to purchase shares in primary co-operative societies. The moneys received by the central society out of the 'Principal State Partnership Fund' will be credited by it to a 'Subsidiary State Partnership Fund'.

(21) Every purchase of shares out of the moneys in the 'Principal State Partnership Fund' or a 'Subsidiary State Partnership Fund' shall be made only with the previous approval in writing of the State Government.

The liability in respect of shares purchased out of the funds mentioned above will be limited to the amount paid in respect of such shares. If a Central Co-operative Society in which shares are purchased from the 'Principal State Partnership Fund' or a primary co-operative society in which shares are purchased from a ,Subsidiary State Partnership Fund' is liquidated, the State Government shall not have any claim against the apex society in respect of any loss arising from such purchases. All moneys to the credit of the 'Principal or Subsidiary State Partnership Funds' shall not form part of assets of the apex or central societies. The State Government may enter into an agreement with an apex society setting out the terms and conditions on which it shall provide moneys to the apex society for the purchase of shares in central societies to enable them to purchase shares in primary societies.

(22) The State Government may assist co-operative societies by giving them loans and advances, by guaranteeing debentures issued by a society, by guranteeing loans advanced to a co-operative society, or by giving subsidies.

(23) Out of the net profits in a year, a co-operative society shall transfer an amount which is not less than twenty five per cent. of the profits to the reserve fund. It shall also contribute to the Co-operative Education Fund at a rate prescribed in the rules. The balance of the net profits may be utilised by it in payment of dividend, in payment of bonus to members in proportion to the amount or volume of business done by them with the society, in payment of bonus to employees, in creation of funds etc.

(24) A co-operative society may create a provident fund for the benefit of its employees. The Provident Fund shall not form part of the assets of the society.

⟨25⟩ The Registrar may inspect the books of a co-operative society on his own motion.

⟨26⟩ If in the course of an audit, inquiry or inspection it is found that a person who was entrusted with the management of a society, has made any payment contrary to the Act, the rules and the by-laws, or has caused any loss to the society by breach of trust or by gross negligence, the Registrar may, after an enquiry into the conduct of the person, order him to restore the money or the property.

⟨27⟩ A dispute touching the constitution, management or the business of a co-operative society shall be referred to the Registrar and no court will have jurisdiction to enter any suit or other proceedings in respect of such disputes. The disputes may be decided by the Registrar himself or may be transferred to another person who has been invested by the state government with powers in that behalf or to one arbitrator.

⟨28⟩ Before cancelling the registration of a co-operative society, the Registrar may order the society to be wound up and may appoint a liquidator for the purpose. On his appointment, a liquidator will take into his custody all the property belonging to the society. The liquidator shall continue to have the custody or control of the property of the society during the period of appeal, and even when an appeal is preferred, until it is decided. If the appeal is rejected the liquidator will proceed with the liquidation proceedings.

⟨29⟩ The State Government may appoint the Registrar or any other person to act as trustee for the purpose of facilitating the working of co-operative land mortgage banks.

⟨30⟩ The debentures issued by a State Co-operative Land Mortgage Bank shall carry the guarantee of

the State Government as to the repayment of principal and payment of interest.

(31) The State Government may guarantee for any specified period, the payment of a loan granted by a land mortgage bank in excess of the amount to which a borrower is entitled on the basis of the value of the land determined in accordance with the standards of valuation in force, provided the loan is for the development and improvement of land.

(32) A mortgage in favour of a land mortgage bank will have priority over any claim of the Government arising from loans under the Land Improvement Loans Act, 1883 or the Agriculturists Loans Act, 1884.

(33) A mortgage executed in favour of a primary land mortgage bank will stand automatically vested in the State Co-operative Land Mortgage Bank.

(34) If an instalment payable in respect of a loan made by a land mortgage bank remains unpaid, the Registrar, may, on the application of land mortgage bank direct the recovery of the amount due by distraint and sale of the produce of the mortgaged property. Similarly the Registrar shall have the power to bring the mortgaged property for sale without the intervention of the court, in satisfaction of the debts due by the member to a land mortgage bank.

(35) The Registrar, or any person subordinate to him empowered by the Registrar in this behalf may, on the application of a co-operative society, make an order directing the payment on any debt due to the society by selling the property subject to a first charge.

(36) The orders of the Registrar for the recovery of moneys, the awards of arbitrators and orders of the Tribunal shall be executed by the civil court, by the collector, or by the Registrar or any person authorised by him.

(37) The Registrar may direct the attachment of the property of a person before judgement, if he is satisfied that the person, with the intention of delaying the enforcement of an order or an award, is likely to remove the property from the jurisdiction of the Registrar.

(38) The State Government shall constitute a Tribunal consisting of not more than three members. Any person agrieved by the decision of the Registrar, or an award of an arbitrator, given in the settlement of a dispute, may appeal to the Tribunal.

(39) An appeal against the orders of the Registrar in certain cases shall lie to the State Government and against the orders passed by any person other than the Registrar; to the Registrar,

(40) No civil or revenue court will have jurisdiction in respect of matters connected with the registration of co-operative society or its by-laws, the removal of the committee, the winding up of a society or any dispute required to be referred to the Registrar.

II. Model Rules.

The following are the important provisions made in model Rules.

(1) The by-laws of a co-operative society shall provide for certain matters essential for its organisation and management, such as the objects of the society, the nature and extent of the liability of the members, the extent to which the society may borrow funds, the purposes for which the funds may be applied for, etc. In addition to these, the by-laws may also make provision in regard to matters which are incidental to the organisation of the society and the management of its business such as, for instance, the method of recruitment and the conditions of service of the salaried employees etc.

(2) An amendment of the bye-laws of a co-operative society shall be made by a resolution passed by a two-third majority of the members present and voting.

(3) A person shall not become a member of two primary credit societies.

(4) The Chairman of a meeting of a co-operative society shall have a second or casting vote.

(5) A defaulting member shall not be appointed to represent a society in another co-operative society.

(6) For the purpose of election of members of its committee, a co-operative society may divide its member-ship into different groups on a territorial or any other basis. The bye-laws may also specify the number or proportion of the members of the committee who may be elected to represent each such group on the committee and may specify further that, the representatives may be elected by all the members of the society or by only that particular group of members to which such representatives belong.

(7) A co-operative society shall not appoint any person as its paid officer or employee in any category of service, unless he possesses such qualifications and furnishes such security as may be specified by the Registrar.

(8) Every co-operative society shall contribute an amount, not exceeding five percent of its net profits in a year, to the Co-operative Education Fund which will be administered by the State Co-operative Union and if there is no such Union, by a committee appointed by the Registrar.

(9) The reserve fund of a co-operative society shall be indivisible and no member shall have a claim to any share in it. It shall not be withdrawn without the permission of the Registrar previously obtained in writing. Unless otherwise permitted by the Registrar, the reserve fund shall not be invested by the society in its business.

(10) A co-operative society shall not receive deposits and loans from members or non-members exceeding the limit fixed by the Registrar for that society. However, a co-operative society which accepts deposits from members only and has no other outside liability, may accept such deposits in excess of the limit fixed by the Registrar, provided, however, that the excess amount is invested outside the business of the society.

(11) A co-operative society accepting deposits and granting cash credits shall maintain fluid resources in such form and according to such standards as may be fixed by the Registrar.

(12) Every co-operative society shall pay to the State Government a fee for the audit of its accounts in accordance with the scale fixed by the Registrar with the previous approval of the State Government.

(13) No person shall be qualified to be a member of the Tribunal, unless he is a District Judge or has exercised the powers of a District Judge or is an Advocate of at least ten years standing, or is a law-graduate having considerable experience of the co-operative movement.

(14) The Registrar may direct a co-operative society to get its accounts written up to any date in such form and within such time as he may direct. In case of failure by the society to do so, the Registrar may get the accounts written up by a person deputed by him for the purpose and may recover the cost thereof from the society.

(15) Every co-operative society shall furnish to the Registrar every year a receipt and disbursement statement, a profit and loss account, a balance sheet and any other returns specified by him. In case the society fails to do so the Registrar may depute a person to get the returns and recover the cost thereof from the society.

CO-OPERATION AND THE SECOND FIVE YEAR PLAN

Act II of 1912 widened the scope of the Co-operative movement in India as it provided for the formation of societies for all purposes, both at the primary and the central stages. Between 1920 and 1930 there was a rapid expansion of the movement but after 1930 it was caught in the agricultural depression and the steep fall in agricultural prices resulted in a heavy accumulation of overdues. Between 1935 and 1940 the co-operative movement underwent a process of reconstruction and a large number of societies were either liquidated or reorganised after writing off the major portion of their reserves and loans from Central banks. Then came the Second World War. It pushed up agricultural prices and strengthened the co-operatives. The Reserve Bank of India suggested in 1941 that the primary societies should no longer confine their activities to credit but should be multi-purpose in character so as to embrace the whole life of the farmer. When controls were introduced on the distribution of essential consumer goods these co-operative societies built up a large volume of business in addition to the provision of credit. In a few States the societies participated in the procurement drive. In Madras the co-operative stores procured and sold foodgrains valued at Rs. 3·07 crores and Rs. 3·29 crores respectively in 1947-48. With the lifting of controls a fairly large percentage of these societies all-over India suffered heavily.

In 1947 the Co-operative Planning Committee recommended that the target for the co-operatives should be to serve 50 per cent of the villages and 30 per cent of the rural population within 10 years. On the recommendation of the Agricultural Credit Organisation Committee (1947) Bombay began to organise

multi-purpose societies which would satisfy the normal cultivation needs of the members and serve also as agencies for supply and sale. Madras followed the policy of developing multi-purpose activities in existing rural credit societies. Under the Development Co-ordination Plan of U. P. the multipurpose co-operative society was entrusted with the task of increasing the production of food and cloth without concentrating on credit. In 1948 Bihar launched a dual programme of the organisation of new multi-purpose co-operative societies and the conversion of existing credit societies into multipurpose societies. Groups of 100 villages were taken up for the intensive organisation of these multipurpose co-operatives. Inspite of the large increase in the number of societies there was little improvement in their working. The percentage of owned funds and deposits to the working capital of agricultural credit societies declined from 42 and 10 respectively in 1950 to 37 and 8·9 respectively in 1955. There was a marked increase in the percentage of overdues. "In 1954-55 in five out of nine major States over 25 per cent of the agricultural societies worked at a loss. The five include Andhra (45 per cent), Madras (35 per cent) and Bombay (35 per cent)" (Darling, p. 5).

In 1951 the Reserve Bank decided to undertake an All-India Rural Credit Survey "which should include all strata of the rural population and cover problems of capital formation in the rural areas as well as the credit requirements of both economic and indigent farmers." The Report of this Survey was published in 1954.

The All India Rural Credit Survey has pointed out that "so far many attempts have been made to remove the internal weaknesses of the credit structure without taking into consideration the weaknesses of the rural structure as a whole. Futile efforts have been made to combine the weak against the strong in conditions in

which the weak have had no chance" The first task therefore is to rectify this position and create conditions in which Co-operation can properly function. This can be achieved only with adequate State help so as to enable the co-operative organisation to withstand the opposition of vested interests. "The manner of this help—therefore, cannot be merely administrative. The State's way of help hitherto has been to over-administer and under finance. But that is no remedy for a total problem which may now be seen to be one, not of rural-minded credit alone, but of rural-minded credit in conjunction with rural-minded development of agriculture and rural-minded organisation of marketing, processing etc, The total programme needed may be described as of rural re-orientation of the operative forces of the country's administrative and financial organisation. It implies a combination of rural conscience, rural will and rural direction. Such a combination strong enough to be an over-riding factor in the situation has to come from Government and the more powerful institutions of Government. In Co-operation we have what may be described as a combination of the weak at the bottom. The State is or ought to be a combination for the weak at the top. An effective programme is possible only if the State at one end joins hands with co-operatives at the other in an effort to bring about the rural-mindedness that is needed."

The survey has suggested an integrated scheme of rural credit which is based on three principles (a) State partnership at different levels. This will include financial partnership not only in rural credit but also in an important sector of commercial banking (b) co-ordination between credit and other economic activites especially processing, marketing, cottage industries etc. and (c) administration through adequately trained and efficient personnel.

The Second Five Year Plan embodies many of these recommendations.

In a socialist pattern of society "the basic criterion for determining the lines of advance must not be private profit but social gain and the pattern of development and the structure of socio-economic relations should be so planned that they result not only in appreciable increases in national income and employment but also in greater equality in incomes and wealth." The objectives of the Second Five Year Plan therefore include raising the general standard of living, stepping up of industrialisation, expansion of employment opportunities both in urban and rural areas, reduction of inequalities in income and wealth and a more even distribution of economic power,

The Plan further emphasises that "in areas which offer special opportunities for development, the co-operative form of organisation has advantages which neither the system of private enterprise nor that of State ownership can match. In particular, it offers a means of achieving results valuable to the community by drawing equally upon incentives which are social and incentives which are individual." It is therefore of paramount importance that the co-operative principle should be applied to the re-organisation of the cottage and small scale industries as well as to a wide range of activities in the field of agriculture so that co-operative production and distribution may materially help in the reduction in inequalities in income and wealth.

The building up of small and homogenous groups at the base is essential for the effective functioning of the co-operative organisations at higher levels, hence the reorganisation of primary co-operative societies at the village level should be speeded up with active State support and assistance. These co-operatives will provide agricultural credit, undertake marketing and pro-

cessing, develop cottage and small scale industries and supply consumers' goods etc. While the provision of adequate credit on reasonable terms will be an important part of the programme of rural co-operation, from credit, co-operation has to cover other activities in the village including co-operative farming and has to bring under its banner the entire population of the village. "In a country whose economic structure has its roots in the village, co-operation is something more than a series of activities organised on co-operative lines; basically, its purpose is to evolve a system of co-operative community organisation which touches upon all aspects of life. Within the village community there are sections of the population who need special assistance. Co-operation should, therefore, mean an obligation towards all families in the village community and the development of land and other resources and of social services in the common interest of the village as a whole. This is the underlying approach in setting co-operative village management as the main direction of re-organisation in the rural economy."

Under this scheme credit and non-credit societies should be linked to one another so that the agriculturist can be provided with credit for seeds, manures, agricultural implements and essential consumer goods and is also given assistance in the marketing of his produce. It would be necessary to form large-sized co-operative societies covering a group of villages by amalgamation of existing small societies or by organising new ones. Each society should have a minimum share capital of Rs. 15,000 and have a total business of about Rs. 1·5 lakhs. These credit societies would be affiliated to the primary marketing society serving a mandi area and they would collect the produce of their members for sale through the marketing society and purchase from this society stocks required by them for distribution to their members.

As a large percentage of agriculturists is not credit worthy the credit society should advance loans on the basis of production programmes and anticipated crops. A maximum credit limit would be fixed for each member and within this limit he would be given loans according to his requirements and as far as possible these loans would be in kind, in the form of seed, manure etc. Standard scales of loans for different crops would be laid down and credit limits would be fixed in advance of the season so as to make credit available in good time.

The Second Plan lays much emphasis on the improvement in the conditions of agricultural marketing so as to secure for the farmer his due share of the price paid by the consumer and subserve the needs of planned development. "To achieve these objects, malpractices associated with the buying and selling of agricultural produce have to be eliminated, arrangements made for the efficient distribution of marketable surpluses from producing to consuming areas and co-operative marketing has to be developed to the maximum extent possible. Rural marketing and finance have to be integrated through the development of marketing and processing on co-operatives". It is estimated that the co-operative agencies will handle about 10 per cent of the marketable surplus.

The primary marketing societies will be federated together in an apex marketing society serving the State as a whole. These societies as well as large credit societies will be given assistance to construct warehouses.

Under the Agricultural Produce Development and Warehousing Corporation Act of 1956 a National Co-operative Development and Warehousing Board has been formed with representatives of the Central Government, Reserve Bank, State Bank of India and

non-officials with co-operative experience as members. The Central Government has undertaken to make to the Board an initial grant of Rupees five crores and a recurring grant in each year of rupees five crores, and to increase the amount after five years, if required. The Board will maintain two funds:—(a) National Warehousing Development Fund to be utilised for subscribing to the share capital of the Central Warehousing Corporation, for advancing loans to State Governments for enabling them to subscribe to the share capital of State Warehousing Corporations, and for advancing loans and granting subsidies to a State Government for the purpose of promoting the warehousing and storage of agricultural produce; (b) National Co-operative Development Fund to be utilised for advancing loans and granting subsidies to State Governments for enabling them to subscribe to the share capital of co-operative societies or to finance them.

The Central Warehousing Corporation which was started in 1957 has an authorised share capital of Rupees twenty crores. Repayment of the principal of the share and a minimum annual dividend will be guaranteed by the Central Government. The functions of this Corporation will include construction of warehouses, management of warehouses for the storage of agricultural produce, seeds, manures and fertilisers offered by individuals, co-operative societies and others and provision of facilities for transport of produce to and from warehouses.

Every State will have its own Warehousing Corporation with functions similar to those of the Central Corporation which will nominate five directors to the Board of the State Corporation. The other five directors will be nominated by the State Government. Warehouse receipts will be treated as negotiable instru-

ments on the security of which banks can provide credit to those who deposit agricultural produce in warehouses.

The Second Plan has emphasised that land reform programmes should do much to stimulate the growth of co-operative movement. "Reduction of disparities in the ownership of land is also essential for developing a co-operative rural economy. As different phases of the land reform programme are implemented care has to be taken to ensure that measures of land reform are worked out with a view to increased agricultural production. From this aspect the national extension and community development programmes and programmes for agricultural development, rural credit and marketing and others are as vital to the success of land reform as land reform is vital to their success." As demand for credit will expand with the progress of land reform and consequent increase in the number of small cultivators care should be taken to ensure that co-operative credit institutions are not placed under handicaps which might affect their financial soundness.

The progress of Co-operative farming has been meagre so far but it is necessary to accelerate its pace. Co-operative farming societies formed by voluntary groups should receive special assistance e g., credit from Government or from co-operative agencies; preference in the supply of improved seeds, fertilisers etc., facilities for consolidation of lands comprised in a co-operative farm, technical assistance of personnel in farm operations, marketing etc. Settlement on land found to be surplus on the imposition of ceiling on agricultural holdings should be made on co-operative lines. Holdings which are below the basic or floor limit should be grouped into co-operative farming units.

With the growth of co-operative farming societies and the development of co-operation in various non-farm activities the rural economy should become stronger

and inequalities in income would be reduced by diversification of occupations and expansion of work opportunities within the rural economy. With co-operative village management "the resources of the village community derived from agriculture, trade and village industry will be employed in securing the maximum increase in production and employment through action within the village as well as through co-operation in activities extending beyond the village. Such a village community will have an integrated social and economic structure in which agricultural production, village industries, processing industries, marketing and rural trade are all organised as co-operative activities."

Self help and co-operation are the principles on which the National Extension Service movement rests and through these the villagers will be able to develop a new life for themselves and participate with increasing awareness and responsibility in the planning and implementation of projects which are material for their well being.

Among the other activities which co-operatives have been asked to take up under the Second Plan are the organisation of village and small industries co-operatives, organisation of landless labour in labour co-operatives for construction work, co-operatives among the tribal population, co-operative housing both rural and urban, consumers' co-operation, co-operative milk supply, fishermens' co-operatives etc. Provision of long term credit through Land Mortgage Banks forms an important part of the programme.

Stress has been laid on schemes for the co-operative training of all grades of employees of co-operative societies as well as on the co-operative education of the office bearers and members of co-operatives.

The role of the Reserve Bank in the integrated system of credit is of crucial importance. Although its

main concern will be the development of co-operative credit, the Bank will have to participate in a large measure in the expansion of all types of co-operative economic activities and in the training of co-operative personnel.

The Bank provides to the apex co-operative banks (a) short term credit for seasonal agricultural operations and marketing of crops (b) credit for financing the production and marketing activities of approved cottage and small-scale industries on State Government guarantee (c) medium term credit for periods ranging from 15 months to 5 years on the guarantee of State Governments. All these loans are advanced at a concessional rate of 2 per cent below the bank rate. Medium term loans would now be advanced from the National Agricultural Credit (Long-term Operations) Fund and these would be granted to State Co-operative Banks for financing cultivators to purchase shares of co-operative sugar factories. The National Agricultural Credit (Stabilisation) Fund has also been created for converting short-term into medium-term loans in times of famine, drought, etc.

After the nationalisation of the Imperial Bank of India (now called the State Bank of India) in July, 1955 it has given various facilities to co-operatives in furtherance of its objective of being responsive to their needs. It allows interest on advances to co-operatives at ½ per cent below its usual rate. It considers proposals for advances against the repledge of goods pledged to co-operative banks. Apex banks and central co-operative banks have been given facilities of free remittance once a week for remitting funds to branches.

The Rural Credit Survey Committee has recommended that there should be close co-ordination between the different components of the superstructure of co-operative credit. While the State Co-operative Bank

and affiliated Central Banks should be responsible for provision of short and medium term credit the Central and Primary Land Mortgage Banks should provide long-term loans. The State Co-operative Bank and the Central Land Mortgage Bank should remain separate entities but have as far as possible common members on their directorate.

The Central Land Mortgage Bank would have at least 51 per cent State contribution to its share capital. The bank should give first priority to loans for improvement, reclamation and development of land, purchase of agricultural equipment and similar productive purposes rather than for redemption of mortgages on land. It is necessary that long term credit should be linked to production and land improvement. Central Land Mortgage Banks should issue debentures with State guarantee.

The State Co-operative Marketing Societies should be a pure federation of co-operative marketing societies at the district and primary levels. These should be financially, legally, and even administratively distinct from the corresponding State Co-operative banks but maintain close co-ordination with each other. The State Marketing Society will arrange for marketing of crops, distribution of agricultural and domestic requirements and for construction of godowns and warehouses. The State will provide at least 51 per cent of the share capital from the apex to the primary level and will also provide technical experts for marketing and processing.

The targets fixed under the Second Five Year Plan are:—

Credit

Number of large-sized societies.	...	10,400
Target for short-term credit.	...	Rs. 150 crores.
Target for Medium-term credit.	...	Rs. 50 crores.
Target for long-term credit.	...	Rs. 25 crores.

Marketing and Processing

Number of Primary Marketing Societies.	... 1800
Number of Co-operative Sugar Factories.	... 35
Number of Co-operative Cotton gins.	... 48
Other co-operative processing societies.	... 118

Warehouses and storage

Warehouses of Central and State Corporations.	350
Godowns of marketing societies.	... 1500
Godowns of large-sized credit societies.	... 4000

The Reserve Bank has laid down standards for the re-organisation of central financing agencies under which there should ordinarily be one Central bank in one district. A District Central Co-operative Bank should normally have a paid up share capital and reserves of about Rs. 3 lakhs. It should raise local deposits and depend to the maximum extent possible on its own resources and only for the residue on the Apex bank It should have a working capital of at least Rs. 20 lakhs. The Central bank should have a trained staff of Managers, Assistant Managers, and Inspectors of Societies. In several States the Government have deputed staff for the management of these banks.

An optimum level of share-capital should be fixed for each large sized credit society and until that level is reached there should be compulsory contributions from the members together with proportionate contribution by Government through the apex bank. After the optimum level is reached compulsory contribution from members should continue for retiring the Government contribution. The society should be formed on the basis of liability limited to the value of shares held by members or to a certain multiple thereof. The Government or the Central bank may also be admitted to membership. The maximum borrowing limit of the society should be fixed at a certain multiple of their paid-up capital and

reserves. "The emphasis should be on crop loans and the amount of the loan should be so fixed as to form an adequate proportion of the cash outlay per acre of crops and wherever possible loans may be given in instalments." Medium-term loans for productive purposes may also be granted for productive purposes. Every such society should have a paid wholetime qualified Secretary.

The smaller credit society with unlimited liability will serve one village. This society will grant loans, help members to procure agricultural and domestic requirements, provide facilities to members to store their produce and to own and hire improved agricultural implements and tools etc. "Whereas in a limited liability credit society, the borrowing power is fixed as a multiple of the owned funds of the society, in the unlimited liability type, it is left to be decided with reference to the value of the assets belonging to the members. The most commonly adopted basis in this regard is a proportion of the total value of the net assets of all the members of the society."

The primary marketing society will serve as a link between the primary agricultural credit societies and the central co-operative banks. The main function of the society is to market the produce of its members although it may take up the functions of processing and warehousing and supply to members agricultural and domestic requirements and advance loan to members against the security of their produce. It will work in collaboration with the central co-operative bank to which it is affiliated and rural co-operative credit societies which are affiliated to it so as to link up supply of credit by the credit societies to member-producers with the marketing of their produce, and for that purpose to act as agent of the credit societies for recovery of production loans given by them to their mem-

bers. The Society will act as a Warehouseman under the Warehousing Act. Members will include (a) individuals who reside within the area of operations of the society who execute an agreement to sell their produce through the society. They will be allotted "A" Class shares, (b) the rural credit societies of the area and the State Government. They will be allotted "B" Class shares, (c) merchants, traders and commission agents included in the approved list of the society who are engaged in business in agricultural produce and have dealings with the society. These will be admitted as nominal members with no right to vote or to participate in the management or share in the dividend or bonus. They will be allotted "C" class shares. The Board of Directors will consist of Government nominees (not exceeding three), representatives of "A" and "B" class share-holders. It shall be open for the central bank or the regional or apex marketing society to which the society is affiliated to inspect the books and accounts of the society.

Out of the sale proceeds of the produce brought for sale, the marketing society will deduct an amount which will cover the loan taken by the member from the agricultural credit society for his production programme and pass it on to that society or central bank. It will make similar deduction in case it advances a loan to a member on the pledge of its produce. The society will sell produce of its members as their agent and will not accept any liability for loss. The by-laws may permit the society to undertake outright purchases to the extent of its owned funds. The society will serve as a stockist for affiliated societies in respect of seeds, fertilisers etc. and also in respect of domestic requirements.

State partnership is a major item in the integrated scheme. It includes financial partnership in (a) co-operative rural credit (b) in a programme for organisation of co-operative processing, marketing and warehousing

in a programme for the organisation on a co-operative basis of other economic activities in the village.

It is necessary so to design "the extent and manner of State participation involved in State partnership as to ensure that, while responsiveness to the new policies is effectively created, every precaution is taken to safeguard the essential character of the institution in which such participation takes place and nothing is done such as may lead to State interference in its day to day working" (All India Rural Credit Survey-General Report (Abridged), p. 179). The aim of this participation will be to enable the primary society to replace gradually the State contribution to its share capital and to retain at higher levels the major partnership of the State till such time as the primaries acquire strength and stability.

The Standing Advisory Committee on Agricultural Credit recommended in 1956 that "the normal pattern of State partnership should be such as to bring about a fully integrated structure of co-operative credit in each State with the apex bank as the leader of the organisation. Thus the apex bank might hold shares in the Central banks and the Central banks in the large-sized primary societies. Nomination of directors on behalf of the State to the boards of various institutions may be made either by the Government or by the shareholding federal institutions." The State Government will be a "partner" in the sense of partaking in the risk of share capital and is not a mere creditor. "It has been made clear that the essential basis of State partnership is assistance and not interference or control" (Second Five Year Plan, p. 225).

The Rural Credit Survey Committee recommended that the programme for the re-organisation on the basis of State partnership of co-operative institutions at all levels "should provide for each of these institu-

tions having an initial minimum level of share capital which, over a period of years, will be raised to the optimum level. At the apex and central levels invariably (and at the primary level generally) not less than 51 per cent of the share capital of these institutions should be held by or derived from the State Government. Until the optimum level is reached it should be obligatory on members to increase their shareholding so as to increase the level of share capital from the minimum to the optimum. Even after the optimum level of share capital is reached, compulsory contributions should continue for the purpose of retiring the State or State derived contribution to share capital."

An essential feature of this scheme of State participation is the nomination of a certain number of Directors by the Government. The Rural Credit Survey Committee have suggested that "Government should not be allotted more than a third of the seats on the directorate for nomination of its representatives." The Second Indian Co-operative Congress have recommended that nominated Directors should not exceed three in number and that "it is also not necessary that such nominees should be Government officials or officers of the partnering institutions. They may with advantage be experts and persons with special co-operative experience." Sir Malcolm Darling has warned that "in no circumstances should nomination be governed or influenced by political consideration. So far as party or personal questions are concerned, co-operation and politics should have nothing to do with each other." It has also been urged that while Government should have some veto powers only with regard to the loan policy of an institution and to matters falling within the category of its financial policy it should not interfere in matters of day to day administration.

It may be of interest to summarise here the comments

of Sir Malcolm Darling on different items of this Plan of re-organisation. The formation of credit societies covering a group of villages with paid management and with the Government as a shareholder is "a complete break with the Raiffeisen model on which the co-operative agricultural credit system has been built up in India. The proposal is therefore sufficiently revolutionary." He is prepared to give this plan a trial with the following modification, viz., (a) area of operations should not exceed a distance of two miles from the headquarters village; (b) membership should not exceed 300; (c) banking and trading should not be combined; (d) small societies should not be amalgamated without the full consent of the large majority of members; (e) no one should be appointed to represent Government on a Board who has not shown an active interest in Co-operation.

He has observed that the all important task of reviving the small societies should not be lost sight of. Their membership should be increased and steps should be taken for the training of a member in co-operative management. Government should contribute towards the remuneration of the Secretary. Increase in deposits should be given the first place in the scheme of reorganisation.

Darling has pointed out that the Second Five Year Plan following the Rural Credit Survey takes no account of conditions in different States and "seems to expect a more or less universal rate of advance for the whole of India. Even for Bombay, Andhra and Madras the three States where the movement is strongest, I would doubt whether the pace set by the Plan is not too rapid for sound development. For the other States I visited I think the pace should be definitely slowed down, in the case of the weakest to the extent of allowing ten instead of five years for achieving the targets."

Co-operators in India would do well to pay heed to this advice and not "become so target-minded that the target instead of being a means to an end, becomes an end in itself."

The Review of the co-operative movement in India for the period 1954-1956 published recently by the Reserve Bank of India indicates that the movement made good progress inspite of inadequacies in particular aspects. During this period the number of societies rose by 21 per cent, membership by about 15 per cent, and working capital by about 33 per cent. The number of agricultural credit societies which formed the base of the movement rose from 1·35 lakhs to 1·68 lakhs and the amount of loans advanced by them rose from Rs. 2,964 lakhs in 1953 to Rs. 4,962 lakhs in 1955-56. The percentage of overdues to loans outstanding of agricultural credit societies declined from 29 to 25. The owned funds of Central Banks rose from Rs. 1181 lakhs in 1953-54 to Rs. 1515 lakhs in 1955-56 and those of State Co-operative Banks from Rs. 561 lakhs to Rs 765 lakhs. "The programme of reform and development which had been implemented in the last three or four years in various states had begun to bear fruit in some measure and had led to the strengthening of the co-operative credit structure as well as an expansion in the volume of agricultural finance provided by the co-operative credit institutions supported by liberal financial accommodation from the Reserve Bank of India."

APPENDIX I

THE BOMBAY CO-OPERATIVE SOCIETIES ACT, 1925

ACT No. VII of 1925 with Amendments upto 1950.

An Act to consolidate and amend the law relating to Co-operative Societies in the Presidency of Bombay.

Whereas it is expedient further to facilitate the formation and working of co-operative societies for the promotion of thrift, self-help and mutual aid among agriculturists and other persons with common economic needs so as to bring about better living, better business and better methods of production and for that purpose to consolidate and amend the law relating to co-operative societies in the Presidency of Bombay; and whereas the previous sanction of the Governor-General required by sub-section (3) of section 80A of the Government of India Act has been obtained for the passing of this Act; It is hereby enacted as follows:—

CHAPTER I

Preliminary

1. This Act may be called the Bombay Co-operative Societies Act, 1925. Short title

2. This Act extends to the whole of the Presidency of Bombay. Extent

3. In this Act, unless there is anything repugnant in the subject or context, Definitions

(a) "by-laws" means by-laws registered under

this Act and for the time being in force and includes a registered amendment of such by-laws;

(b) "Committee" means the Committee of Management or other directing body to whom the Management of the affairs of a society is entrusted;

(c) "Member,"—see sec. 2 (c) of Act II of 1912.

(d) "Officer"—see sec. 2 (d) of Act II of 1912.

(e) "Society" means a society registered or deemed to be registered under this Act;

(f) "Registrar"—see sec. 2 (f) of Act II of 1912.

(g) "Rules" means rules made under this Act;

(h) (1) a "Resource society" means a society formed with the object of obtaining for its members the credit, goods or services required by them;

(2) a "Producers' society" means a society formed with the object of producing and disposing of goods as the collective property of its members and includes a society formed with the object of the collective disposal of the labour of the members of such society;

(3) a "Consumers' society" means a society formed with the object of obtaining and distributing goods to or of performing services for its members, as well as to other consumers and of dividing among its members and customers in a proportion prescribed by the rules or by by-laws of such society, the profits accruing from such supply and distribution;

(4) a "Housing society" means a society formed with the object of providing its members with dwelling houses on conditions to be determined by its by-laws;

(5) a "General society" means a society not falling under any of the four clauses above-mentioned.

(6) a "Federal society" means a society not less than three-fourths of the members of which are societies.

(7) a "Farming society" means a society formed with the object of promoting development of land and better methods of cultivation by means of improved

seed, manure, irrigation, bunding, tractor ploughing, gully plugging and soil conservation.

Explanation:—A Farming society shall be of two classes:—(1) a Better Farming society, and (2) a Co-operative farming society—

(i) A Farming society shall be classed as a Better farming society if the predominant object is the application of improved methods of cultivation. A Better farming society includes a Crop protection society.

(ii) A Farming society shall be classed as a Co-operative farming society if the predominant object is the application of co-operative methods by the holders of lands and in respect of cultivation.

The Registrar shall classify all societies under one or other of the above heads and his decision shall be final:

Provided that the Registrar for reasons to be recorded in writing may alter the classification of any society from one head to another head or from one sub-head to another sub-head.

A society formed with the object of facilitating the operations of any one of the above classes of societies shall be classified as a society of that class.

A list of all such societies, so classified shall be published annually in the official Gazette.

(i) "Tribunal" means the Bombay Co-operative Tribunal constituted under section 63A.

CHAPTER II.

Registration

The Registrar

4. The State Government may appoint a person to be Registrar of Co-operative Societies for the presidency or any portion of it, and may appoint a person or persons to assist such Registrar, and may, by general or special order, confer on any such person or persons all or any of the powers of a Registrar under this Act.

Societies which may be registered.

5. Subject to the provisions hereinafter contained a society which has as its object the promotion of the economic interests of its members in accordance with co-operative principles or a society established with the object of facilitating the operations of such a society may be registered under this Act with or without limited liability:

Provided that—

(1) unless the State Government by general or special order otherwise directs, the liability of a society of which a member is a society shall be limited;

(2) the members of a society which has been registered under this Act with unlimited liability such liability not having been changed from unlimited to limited under this Act shall, on its liquidation, be jointly and severally liable for and in respect of all its obligations.

Restrictions on interest of member of society with limited liability and a share capital

6. Where the liability of the members of a society is limited by shares, no member other than a society shall

(a) hold more than such portion of the share capital of the society, subject to a maximum of one-fifth as may be prescribed by the rules; or

(b) have or claim any interest in the shares of the society exceeding ten thousand rupees: provided that if the society is a housing society a member may have or claim an interest in the shares of the society not exceeding twenty thousand rupees.

Conditions of registration

7. (1) No society, other than a society of which a member is a society, shall be registered under this Act, which does not consist of at least ten persons above the age of eighteen years and, where the object of the society is the creation of funds to be lent to its member, unless all persons forming the society—

(a) reside in the same town or village or in the same group of villages; or

(b) save where the Registrar otherwise directs, are members of the same tribe, class or occupation and no person shall be admitted to the membership of any such society after its registration unless such person fulfils the requirements of clause (a) or (b), as the case may be.

(2) The word "limited" shall be the last word on the name of every society with limited liability registered under this Act.

Power of Registrar to decide certain questions.

8. When any question arises whether for the purpose of the formation, or registration or continuance of a society or the admission of a person as a member of a society under this Act a person is an agriculturist or a non-agriculturist, or whether any person is a resident in a town or village or group of villages, or whether two or more villages shall be considered to form a group or whether any person belongs to any particular tribe, class or occupation, the question shall be decided by the Registrar, whose decision shall be final.

Application for Registration

9. (1) See sec. 8 of Act II of 1912.

Registration

10. See sec. 9 of Act II of 1912.

Evidence of registration

11. See sec. 10 of Act II of 1912.

Annual general meetings.

12. Every society shall within a period of three months after the date fixed for making up its accounts for the year under the rules for the time being in force call a general meeting of its members.

Special general meetings.

13. A special general meeting may be called at any time by a majority of the committee and shall be called within one month—

(1) on the requisition in writing of one-fifth of the members of the society, or

(2) at the instance of the Registrar, or

(3) in case of a society which is a member of a federal society, at the instance of an officer of such federal society.

Change of name: its effect.

14. A society may, by a resolution of a general meeting and with the approval of the Registrar, change its name, but such change shall not affect any right or obligation of the society, or of any of its members, or past members and any legal proceedings pending may be continued by or against the society under its new name.

Amalgamation or transfer of societies.

15. (1) Any two or more societies may, with the approval of the Registrar by resolution passed by a three-fourths majority of the members present at a special general meeting of each such society held for the purpose, amalgamate as a single society: provided that each member has had clear fifteen days' written notice of the resolution and the date of the meeting. Such an amalgamation may be effected without a dissolution, or a division of the funds, of the amalgamating societies. The resolution of the societies concerned shall on such amalgamation be a sufficient conveyance to vest the assets and liabilities of the amalgamating societies in the amalgamated society.

(2) Any society may by a resolution passed in accordance with the procedure laid down in sub-section (1) transfer its assets and liabilities to any other society which is prepared to accept them:

Provided that when any such amalgamation or transfer of assets and liabilities involves the transfer of its liabilities by any society to any other society, it will not be made without giving three months' notice to the creditors of both or all such societies:

Provided further that if a creditor or creditors of any of the societies concerned objects or object to such amalgamation or transfer of assets and liabilities and

gives or give written notice to that effect to the society or societies concerned one month before the date fixed for such amalgamation or transfer, the amalgamation or transfer shall not be made until the dues of such creditor or creditors have been satisfied.

15A. (1) Any society may, with the approval of the Registrar, by a resolution passed by a three-fourths majority of the members present at a special general meeting of the society held for the purpose, resolve to divide itself into two or more societies, provided that each member has had fifteen clear days written notice of the resolution and the date of the meeting. The resolution (hereinafter in this section referred to as a preliminary resolution) shall contain proposals for the division of the assets and liabilities of the society among the new societies in which it is proposed to divide it and may prescribe the area of operation of, and specify the members who will constitute, each of the new societies. Division of Societies.

(2) A copy of the preliminary resolution shall be sent or delivered to all the members and creditors of the society. A notice of the resolution shall also be given in the prescribed manner to all other persons whose interests will be affected by the division of the society.

(3) Any member of the society may, notwithstanding any by-law to the contrary, by notice given to the society within a period of three months from his receipt of the resolution, intimate his intention not to become a member of any of the new societies.

(4) Any creditor of the society may, notwithstanding any agreement to the contrary by notice given to the society within the said period, intimate his intention to demand a return of the amount due to him.

(5) Any other person whose interests will be affected by the division may by notice given to the society object to the division unless his claim is satisfied.

(6) After the expiry of three months from the date of despatch or delivery of a copy of the preliminary resolution to all the members and creditors of the society and of the notice by other person given under sub-section (2), another special general meeting of the society, of which at least fifteen clear days notice shall be given to its members, shall be convened for considering the preliminary resolution. If, at such meeting the preliminary resolution is confirmed by a resolution passed by a majority of not less than two-thirds of the members present, either without changes or with such changes as in the opinion of the Registrar are not material, he may, subject to the provisions of sub-section (9) and section 10, register the new societies and the by-laws thereof. On such registration, the registration of the old society shall be deemed to have been cancelled and the society shall be deemed to be dissolved from the date of such cancellation.

(7) The opinion of the Registrar as to whether the changes made in the preliminary resolution are or are not material shall be final and no appeal shall lie therefrom.

(8) At the special general meeting referred to in sub-section (6) provision shall be made by another resolution for—

(i) repayment of the share capital of all the members who have given notice under sub-section (3);

(ii) satisfaction of the claims of all the creditors who have given notice under sub-section (4);

(iii) satisfaction of the claims of such of the other persons who have given notice under sub-section (5) as the Registrar decides or securing their claims in such manner as the Registrar directs :

Provided that no member or creditor or other person shall be entitled to such repayment or satisfaction until

the preliminary resolution is confirmed as provided in sub-section (6)

(9) If within such time as the Registrar considers reasonable, the share capital of the members referred to in sub-section (8) is not repaid or the claims of the creditors referred to in that sub-section are not satisfied, or the claims of the other persons are not satisfied or secured as provided in clause (iii) of sub-section (8), the Registrar may refuse to register the new societies.

(10) Notwithstanding anything contained in the Transfer of Property Act, 1882, or the Indian Registration Act, 1908, the registration of the new societies shall be a sufficient conveyance to vest the assets and liabilities of the original society in the new societies in the manner specified in the preliminary resolution as confirmed under sub-section (6)).

Amendment of the by-laws of a society.

16. (1) No amendment of the by-laws of a society shall be valid until approved by the resolution of a general meeting and registered under this Act for which purpose a copy of the amendment shall be forwarded to the Registrar.

(2) If the Registrar is satisfied that any amendment of the by-laws is not contrary to this Act or to the rules he may register the amendment.

(3) When the Registrar registers an amendment of the by-laws of a society, he shall issue to the society a copy of the amendment certified by him, which shall be conclusive evidence that the same is duly registered.

Change of liability of society from limited to unlimited or from unlimited to limited.

16A. (1) A society may, subject to the provisions of section 16, by an amendment of its by-laws, change its liability from limited to unlimited or unlimited to limited.

(2) No such amendment shall be registered by the Registrar unless he is satisfied—

(i) that sufficient notice has been given to every member of the society and to any person or class of

persons whose interest will, in the opinion of the Registrar, be affected by the alteration, and

(ii) that with respect to every such member or person who, in the opinion of the Registrar, is entitled to object—

(a) either his assent has been obtained to the change,

(b) or if he signifies his objection—

(i) he is allowed to withdraw his share if he is a member, or

(ii) his debt or claim has been discharged or has determined or has been secured to the satisfaction of the Registrar within three months from the date of the notice:

Provided that the Registrar may, in the case of any person or class of persons for special reasons, dispense with the notice required by this sub-section).

CHAPTER III

Rights and liabilities of members

No rights of membership to be exercised till due payments are made.

17. No person shall exercise the rights of a member of a society unless or until he has made such payment to the society in respect of membership, or acquired such interest in the society as may be prescribed by the rules or the by-laws of such society.

Votes of members.

18. (1) No member of any society shall have more than one vote in its affairs, provided that in the case of an equality of votes the chairman shall have a casting vote.

(1A) Where a share of a society is held jointly by more than one person, only the person whose name stands first in the share certificate shall have the right to vote.

(2) A society, which has invested any part of its

funds in the shares of another society, may appoint one of its members to vote in the affairs of such other registered society.

Restrictions on transfer of share interest.

19. (1) The transfer or charge of the share or interest of a member in the capital of a society shall be subject to such conditions as to maximum holding as may be prescribed by this Act or by the rule.

(2) A member shall not transfer any share held by him or his interest in the capital or property of any society or any part thereof unless

(a) he has held such share or interest for not less than one year;

(b) the transfer or charge is made to the society or to a member of the society or to a person whose application for membership has been accepted by the society; and

(c) the committee has approved such transfer.

CHAPTER IV

Duties of societies

Address of Societies

20. Every society shall have an address registered in accordance with the rules, to which all notices and communications may be sent and shall send notice in writing to the Registrar of any change in the said address within 30 days of such change.

Copy of Act, etc. to be open to inspection

21. Every society shall keep open to inspection at all reasonable times at the registered address of the society—

(a) a copy of this Act.

(b) a copy of the rules governing such society.

(c) a copy of the by-laws of such society, and

(d) a register of its members.

Audit.

22. (1) The Registrar shall by himself or by some person authorised by him in writing by general or

special order in this behalf audit the accounts of every society once at least in every year.

(2) The audit under sub-section (1) shall include an examination of overdue debts, if any, the verification of cash balance and securities, and a valuation of the assets and liabilities of the society.

(3) The Registrar or other person auditing the accounts of any society shall have free access to the books, accounts and vouchers of such society and shall be allowed to verify its cash balance and securities.

The Directors, Managers, and other officers of the society shall furnish to the Registrar or other person appointed to audit the accounts of a society all such information as to its transactions and working as the Registrar or such person may require.

(4) The Registrar and every other person appointed to audit the accounts of a society shall have power, when necessary—

(i) to summon at the time of his audit any officer, agent, servant or member of the society who he has reason to believe can give valuable information in regard to any transaction of the society or the management of its affairs, or

(ii) to require production of any book or document relating to the affairs of any cash or securities belonging to the society by the officer, agent, servant or member in possession of such book, document, cash or securities.

CHAPTER V

Privileges of Societies

23. See sec. 18 of Act II of 1912. Societies to be bodles corporate.

24. (1) Subject to any prior claim of the Government in respect of land revenue or any money recoverable as land revenue or of a landlord in respect of rent or any money recoverable as rent, Prior claim of society.

(a) any debt or outstanding demand owing to a society by any member or past member shall be a first charge (i) upon crops or other agricultural produce raised in whole or in part with a loan taken from the society by such member or past member, and (ii) upon any cattle, fodder for cattle, agricultural or industrial implements or machinery, or raw materials for manufacture or workshops, godown or place of business, supplies to or purchase by such member or past member in whole or in part from any loan whether in money or goods given him by the society.

(b) any outstanding demands or dues payable to a housing society by any member or past member in respect of rent, shares, loans or purchase money or any other rights or amounts payable to such society shall be a first charge upon his interest in the immoveable property of the society.

(2) No property or interest in property which is subject to a charge under sub-section (1) shall be transferred in any manner except by way of lease for a term not exceeding ten years without the previous permission of the society.

(3) Notwithstanding anything contained in any law, any transfer made in contravention of the provisions of sub-section (2) shall be void.

(4) Any person who in contravention of the provisions of sub-section (2) transfers any property which is subject to a charge under sub-section (1) shall, on conviction, be punishable with imprisonment for a term which may extend to six months or with fine which may extend to five hundred rupees.

Charge on immoveable property of members borrowing loans from certain societies.

24.AA. Notwithstanding anything contained in this Act or in any other law for the time being in force—

(i) any person who makes an application to a society of which he is a member for a loan shall, if he owns any land, make a declaration in the form prescribed by rules; such declaration shall state that the applicant thereby creates a charge on the land owned by him and specified therein for the payment of the amount of the loan which the society may make to the member in pursuance of the application and for all future advances, if any, required by him which the society may make to him as such member subject to such maximum as may be determined by the society together with interest on such amount of the loan and advances.

(ii) any person who has borrowed a loan from a society of which he is a member before the date of the coming into force of the Bombay Co-operative Societies (Amendment) Act of 1948, and who owns any land shall, as soon as possible, make a declaration in the form and to the effect referred to in clause (1) and no such person shall, unless and until he has made such declaration, be entitled to exercise any right as a member of the society;

(iii) a declaration made under clause (i) or (ii) may be varied at any time by a member with the consent of the society in favour of which such charge is created,

(iv) no member shall alienate the whole or any part of the land specified in the declaration made under clause (i) or (ii) until the whole amount borrowed by the member together with interest thereon is paid in full,

Provided that standing crops on any such land may be alienated with the previous permission of the society,

(v) any alienation made in contravention of the provisions of clause (iv) shall be void,

(vi) subject to the prior claims of the Government in respect of land revenue or any money recoverable as land revenue and to the charge, if any, created under an award made under the Bombay Agricultural Debtors Relief Act, 1947, there shall be a first charge in favour of the society on the land specified in the declaration made under clause (i) or (ii) for and to the extent of the dues owing by him on account of the loan,

(vii) notwithstanding anything contained in Chapter X-A of the Bombay Land Revenue Code, 1879, the Record of Rights maintained under the said Chapter shall also include the particulars of every charge created under a declaration under clause (i) or (ii).

Explanation—For the purposes of this section, 'society' shall mean a society of which majority of the members are agriculturists and which is—

(a) a Resource society the primary object of which is to obtain credit for its members, or

(b) any other class of societies specified in this

behalf by the Provincial Government by a general or special order.

Deduction from salary to meet society's claim in certain cases.

24A. (1) A member of a society may execute an agreement in favour of the society providing that his employer shall be competent to deduct from the salary or wages payable to him by the employer such amount as may be specified in the agreement and to pay the amount so deducted to the society in satisfaction of any debt or other demand owing by the member to the society.

(2) On the execution of such agreement the employer shall, if so required by the society by a requisition in writing and so long as such debt or demand or any part of it remains unpaid, make the deduction in accordance with the agreement and pay the amount so deducted to the society.

(3) The provisions of this section shall also apply to all such agreements of the nature referred to in sub-section (1) as were in force on the date of the commencement of the Bombay Co-operative Societies (Amendment) Act, 1942.

(4) Nothing contained in this section shall apply to persons employed in Federal railways (within the meaning of the Government of India Act, 1935), mines and oilfields.

Charge and set-off in respect of shares or interest of member.

25. See Sec. 20 of Act II of 1912.

Shares or interest not liable to attachment.

26. See Sec. 21 of Act II of 1912.

Transfer of interest on death of member.

27. (1) On the death of a member of a society such society may within a period of one year from the date of the death of such member transfer the share or interest of

the deceased member to a person or persons nominated in accordance with the by-laws of the society, if duly admitted a member of the society, in accordance with the rules or the by-laws of the society, or if there is no person so nominated, to such person as may appear to the Committee to be the heir or legal representative of the deceased member if duly elected a member of the society, or may pay to such nominee, heir or legal representative, as the case may be, a sum representing the value of such member's share for interest as ascertained in accordance with the rules or by-laws :

Provided that such nominee, heir or legal representative, as the case may be, may require that payment shall be made by the society within one year from the death of the member of the value of the share or interest of such member ascertained as aforesaid.

(2) A society shall subject to the provisions of section 25 and unless prevented by an order of a competent court pay to such nominee, heir or legal representative, as the case may be, all other moneys due to the deceased member from the society.

(3) All transfers and payments made by a society in accordance with the provisions of this section shall be valid and effectual against any demand made upon the society by any other person.

Liability of past member.

28. See Sec. 23 of Act II of 1912.

Liability of the estates of deceased members.

29. See Sec. 24 of Act II of 1912.

Register of members.

30. See Sec. 25 of Act II of 1912.

Admissibility of copy of entry as evidence.

31. (1) A copy of any entry in any book, register or list regularly kept in the course of business in the possession of a society shall, if duly certified in such

manner as may be prescribed by the rules, be admissible in evidence of the existence of the entry and shall be admitted as evidence of the matters and transactions therein recorded in every case where, and to the same extent to which, the original entry would, if produced, have been admissible to prove such matters.

(2) In the case of such societies as the State Government by general or special order may direct no officer of a society shall in any legal proceedings to which the society is not a party be compelled to produce any of the society's books, the contents of which can be proved under sub-section (1), or to appear as a witness to prove the matters, transactions and accounts therein recorded, unless by order of the Court or a Judge made for special cause.

Exemption from compulsory registration of instruments relating to shares and debentures of society.

32. See Sec. 27 of Act II of 1912.

Power to exempt from income tax, stamp duty, registration and court fees.

33. (1) The Central Government by notification in the Official Gazette, may in the case of any society or class of societies, remit the incometax or super tax payable in respect of the profits of the society, or of the dividends or other payments received by the members of the society on account of profits or in respect of interest on securities held by the society.

(2) The Government by notification in the Official Gazette may, in the case of any society or class of societies remit—

(a) the stamp-duty with which, under any law for the time being in force, instruments executed by or on behalf of a society or by an officer or member and relating to the business

of the society, or any class of such instruments or awards of the Registrar or arbitrators under this Act are respectively chargeable, and

(b) any fee payable under the law of registration and of court fees for the time being in force.

In this sub-section 'Government' in relation to Stamp-duty, means the Government which is the collecting Government for the purposes of the Indian Stamp Act, 1899, in relation to court fees means the Government which is the appropriate Government for the purposes of the Court Fees Act, 1870, and save as aforesaid means the State Government.

State Government may give loans or guarantee interest.

33 A. With such safeguards as may be prescribed by rules in this behalf the State Government may give loans to societies or guarantee the payment of the principal of debentures issued by them or of interest thereon or both.

CHAPTER VI

Property and funds of societies

Restrictions on loans.

34. (1) Except with the general or special sanction of the Registrar a society shall not make a loan to any person other than a member.

(2) Deleted.

(3) The State Government may, by general or special order, prohibit or restrict the lending of money on the security of moveable property or on mortgage of immoveable property by any society or class of societies.

Restrictions on borrowings.

35. See Sec. 30 of Act II of 1912.

Restrictions on other transactions with non-members.

36. Consumers', Producers' and Housing Societies may to the extent permitted by their by-laws trade with persons who are not members, but the transactions of a Resource society with persons other than members except as provided under section 34 or 35 shall be subject to such prohibitions and restrictions, if any, as the State Government may by rules prescribe.

Investment of funds.

37. A society may invest or deposit its funds:—

(a) in the Government Savings Bank, or

(b) in any of the securities specified in section 20 of the Indian Trusts Act, 1882, or

(c) in the shares or on the security of any other society, provided that no such investment shall be made in the shares of any society other than one with limited liability, or

(d) with any bank or person carrying on the business of banking approved for this purpose by the Registrar, or

(e) in any other mode permitted by the rules or by general or special order of the State Government.

Restrictions on dividend.

38. No Society shall pay a dividend to its members at a rate exceeding $6\frac{1}{4}$ per cent.

Reserve Fund

39. (1) Every society which does or can derive a profit from its transactions shall maintain a reserve fund.

(2) In the case of a Resource or Producers' society at least $\frac{1}{4}$th of the net profits of the society each year shall be carried to the reserve fund and in the case of any other society at least 1/10th of the net profits of the society each year shall be carried to the reserve fund and such reserve fund may be used in the business of the society or may be invested, subject to the provisions of section 37, as the State Government may by general or special order direct, or may, with the previous sanction of the State Government be used in part for some

public purpose likely to promote the objects of this Act or for some purposes of provincial or local interest.

39A. Every society which pays a dividend to its members at a rate of 4 per cent or more shall contribute towards the educational fund of the Bombay Provincial Co-operative Institute at such rate as may be prescribed.

Contribution to educational fund of Bombay Provincial Co-operative Institute.

40. Subject to the provisions of section 38 the balance of the profits of a society after making the prescribed provision for the reserve fund and contribution, if any, to the educational fund of the Bombay Provincial Co-operative Institute may together with any available profits of past years be distributed among its members and in the case of Consumers' and Producers' societies, also among persons who are not members, to the extent and under the conditions prescribed by the rules or by the by-laws of such societies provided that:—

Restrictions on distribution of profits.

(a) in the case of a Resource society on a basis of unlimited liability in which the members do not hold shares, no distribution of profits shall be made without the general or special order of the State Government in this behalf, and

(b) in the case of a Resource society on a basis of unlimited liability in which the members hold shares, no such distribution of profits shall be made until 10 years from the date of registration of the society have elapsed.

41. Any society may establish a provident fund for its members or officers or servants out of contributions from such members or officers or servants, as the case may be, in accordance with by-laws made by the society in this behalf and may contribute to such provident fund from its net profits, after the prescribed payments have been made to the reserve fund, provided

Provident Fund.

that such provident fund shall not be used in the business of the society but shall be invested under the provisions of section 37, and provided further, that no part of such provident fund shall be considered as an asset of the society.

Contribution to charitable purpose.

42. With the approval of the Bombay Central Co-operative Institute and after the payments prescribed by sub-section (2) of section 39 and section 39A have been made any society may—

(a) set aside a sum not exceeding 20 per cent of its net profits, and

(b) utilise from time to time the whole of such sum in contributing to any public or co-operative purpose, or to a charitable purpose as defined in section 2 of the Charitable Endowments Act, 1890.

CHAPTER VII

Inspection of Affairs.

Inquiry by Registrar.

43. (1) The Registrar may of his own motion by himself or by a person duly authorised by him in writing in this behalf hold an inquiry into the constitution, working and financial condition of a society.

(2) The Registrar shall hold such an inquiry as is contemplated in sub-section (1) of this section—

(a) on the requisition of a society, duly authorised by rules made in this behalf to make such requisition, in respect of one of its members, such member being itself a society.

(b) on the application of a majority of the committee of the society.

(c) on the application of $\frac{1}{3}$rd of the members of the society.

(3) All officers and members of the society whose affairs are investigated shall furnish such information in

their possession in regard to the affairs of the society as the Registrar or the person authorised by the Registrar may require.

(4) The result of any inquiry under this section shall be communicated to the society whose affairs have been investigated.

Inspection of books of indebted society.

44. (1) The Registrar may on the application of a creditor of a society inspect or direot some person authorised by him by order in writing in this behalf to inspect the books of the society:

Provided that—

(a) the applicant satisfies the Registrar that the debt is a sum then due, and that he has demanded payment thereof and has not received satisfaction within a reasonable time, and

(b) the applicant deposits with the Registrar such sum as security for the costs of the proposed inspection as the Registrar may require.

(2) The Registrar shall communicate the result of any such inspection to the creditor.

Costs of inquiry.

45. Where an inquiry is held under section 43 or an inspection is made under section 44 the Registrar may apportion the costs, or such part of the costs, as he may think right between the society, the members or creditor demanding the inquiry or inspection, the officers or former officers, and the members or past members of the society:

Provided that—

(a) no order of apportionment of the cost shall be made under this section unless the society or persons liable to pay the costs thereunder has or have been heard or has or have had a reasonable opportunity of being heard,

(b) the Registrar shall state in writing under his own hand the grounds on which the costs are apportioned.

Recovery of costs.

46. Any sum awarded by way of costs under section 45 may be recovered on application by the Registrar to a Magistrate having jurisdiction in the place where the person from whom the money is claimable actually and voluntarily resides, or carries on business, by the distress and sale of any moveable property within the limits of the jurisdiction of such Magistrate belonging to such person, and such Magistrate shall proceed to recover the same in the same manner as if it were a fine imposed by himself.

Registrar to bring defects disclosed on inquiry or inspection to notice of society.

46-A (1) If the result of any inquiry held under section 43 or an inspection made under section 44 discloses any defects in the working of a society the Registrar may bring such defects to the notice of the society and if the society is a member of a Federal society to the notice of the Federal society. The Registrar may also make an order directing the society or its officers or the Federal society to take such action as may be specified in the order to remedy the defects within the time specified therein.

(2) The Federal society or the society concerned may appeal against an order made by the Registrar under sub-section (1) to the State Government within the time specified in the order.

(3) The State Government may in deciding the appeal annul, reverse, modify or confirm the order of the Registrar.

CHAPTER VIII

Liquidation and Arbitration

Winding up

47. If the Registrar, after an inquiry has been held under section 43 or after an inspection has been made under section 44 or on receipt of an application made by three fourths of the members of a society present at a special general meeting, called for the purpose or of his own motion, in the case of a society that has not commenced working, or has ceased working, or possesses

shares or members' deposits not exceeding Rs. 500, is of opinion that the society ought to be wound up he may issue an order directing it to be wound up, and when necessary, may appoint a liquidator for the purpose and fix his remuneration.

Society may be wound up if membership is reduced.

48. Where it is a condition of the registration of a society that it shall consist of at least ten members who are majors, the Registrar may by order in writing direct the society to be wound up, if at any time it is proved to his satisfaction that the membership has been reduced to less than ten such members.

Effect of liquidation of society on past member or on estate of deceased member.

48A. Notwithstanding any thing contained in sections 28 and 29, when a society is directed to be wound up under section 47 or 48, the liability of a past member and the liability of the estate of a deceased member of the society, as it existed on the date on which the society was directed to be wound up, shall continue until all the liabilities of the society are met.

Effect of cancellation of registration.

49. When the affairs of a society for which a liquidator has been appointed under section 47 have been wound up, or, where no liquidator has been appointed after two months from the date of an order under section 47, or after confirmation of such order in appeal, the Registrar shall make an order cancelling the registration of the society, and the society shall be deemed to be dissolved from the date of such order.

Powers of liquidator.

50. A liquidator appointed under section 47 shall have power with the sanction of the Registrar to do all or any of the following things:—

(a) pay any class or classes of creditors in full;

(b) make any compromise or arrangement with creditors or persons claiming to be creditors or having or alleging themselves to have any claim, present or future, whereby the society may be rendered liable;

(c) to compromise all calls or liabilities to calls and debts and liabilities capable of resulting in debts, and all claims, present or future, certain or contingent, subsisting or supposed to subsist between the society and a contributory or other debtor or person apprehending liability to the society and all questions in any way relating to or affecting the assets or the winding up of the society on such terms as may be agreed and take any security for the discharge of any such call, liability, debt, or claim and give a complete discharge in respect thereof;

(d) from time to time to determine the contribution to be made or remaining to be made by the members or past members or by the estates or nominees, heirs or legal representatives of deceased members or by any officers to the assets of the society, such contribution including debts due from such members or persons;

(e) to institute and defend suits and other legal proceedings on behalf of the society in the name of his office;

(f) to issue requisitions under section 59 upon the Collector for the recovery as arrears of land revenue of any sum ordered by him to be recovered as dues from members, or as a contribution to the assets of the society or to the cost of liquidation;

(g) to get disputes referred to arbitration;

(h) to investigate all claims against the society and subject to the provisions of this Act to decide questions of priority arising out of such claims, and to pay rateably according to the amount of such debts, the surplus if any being applied in payment of interest from the date

of liquidation at a rate to be fixed by the Registrar and not exceeding the contract rate;

(i) to determine by what persons and in what proportion the cost of the liquidation shall be borne;

(j) to give such directions in regard to the collection and distribution of the assets of the society as may appear to him to be necessary for winding up the affairs of the society;

(k) to fix the time or times within which creditors shall prove their debts and claims or be included for the benefit of any distribution made before those debts or claims are proved;

(l) to carry on the business of the society so far as may be necessary for the beneficial winding up of the same.

Provided that no liquidator shall determine the contribution, debt or dues to be recovered from a member or a past member or the representative of a deceased member unless opportunity has been given to such member or past member or to such representative to answer the claim.

Power of Registrar to assess damage against delinquent promoters etc.

50A (1) Where, in the course of an audit under section 22 or an inquiry under section 43 or an inspection under section 44 or the winding up of a society it appears that any person who has taken part in the organisation or management of the society or any past or present chairman, secretary, member of the managing committee or officer of the society has misapplied or retained or become liable or accountable for any money or property of the society or has been guilty of misfeasance or breach of trust in relation to the society, the Registrar may, on the application of the officer conducting the audit or holding the inquiry or inspection, or the liquidator or any creditor or contributory examine into the conduct of such person and after

giving reasonable opportunity to the person concerned to submit his explanation, make an order requiring him to repay or restore the money or property or any part thereof respectively with interest at such rate as the Registrar thinks just or to contribute such sum to the assets of the society by way of compensation in regard to the misapplication, retainer, misfeasance or breach of trust as the Registrar thinks just.

This section shall apply notwithstanding that the act is one for which the offender may be criminally responsible.

Bar of suit in winding up and dissolution matters.

51. Save in so far as is expressly provided in this Act no civil court shall take cognisance of any matter connected with the winding up or dissolution of a society under this Act and when a winding up order has been made no suit or other legal proceeding shall lie or be proceeded with against the society except by leave of Registrar and subject to such terms as he may impose.

Disposal of surplus assets.

52. After all the liabilities including the paid-up share capital of a cancelled society have been met, the surplus assets shall not be divided amongst its members but they shall be devoted to any object or objects described in the by-laws of the society and when no object is so described, to any object of public utility determined by the general meeting of the society and approved by the Registrar or they may in consultation with them either be assigned by the Registrar in whole or in part to any or all of the following: —

(a) an object of public utility of local or communal interest,

(b) a charitable purpose as defined in section 2 of the Charitable Endowments Act, 1890,

(c) the Bombay Central Co-operative Institute, or may be placed on deposit with a Central Co-operative Bank until such time as a new society with similar conditions is registered

when with the consent of the Registrar such surplus may be credited to the reserve fund of such new society.

53. When the society directed to be wound up is a housing society, its assets, both moveable and immoveable, shall for the purpose of winding up or dissolution of the society jointly vest, subject to all rights and equities, in three persons of whom one shall be nominated by the Registrar, one shall be nominated by the said Society in a general meeting specially called for the purpose and one shall be nominated by the Bombay Central Co-operative Institute. Such persons shall, for the purpose of winding up or dissolution of the society, be Joint Liquidators and shall have all the powers of a liquidator under this Act. They may, with the sanction of the Registrar, continue the working of the society, or may, subject to his sanction and in consultation with the members of the society in a general meeting, reconstruct the society or may sell off the premises of the society to the best advantage of all interests concerned, and when all the liabilities of the society are met, may dispose of the surplus assets of the society, if any, as provided in section 52. Surplus assets of housing society.

54. If any dispute touching the constitution or business of a society arises between members or past members of the society or persons claiming through a member or past member or between member or past members or persons so claiming and any officer, agent, or servant of the society past or present or between the society or its committee, and any officer, agent, member or servant of the society past or present, it shall be referred to the Registrar for decision by himself or his nominee or if either of the parties so desires, to arbitration of three arbitrators who shall be the Registrar or his nominee and two persons of whom one shall be nominated by each of the parties concerned. Arbitration.

A dispute shall include claims by a society for debts or demands due to it from a member or past member or the heirs or assets of a past member whether such debts or demands be admitted or not:

Provided that if the question at issue between a society and a claimant, or between different claimants, is one involving complicated questions of law and fact, the Registrar may, if he thinks fit, suspend proceedings in the matter until the question has been tried by a regular suit instituted by one of the parties or by the society. If no such suit is instituted within six months of the Registrar's order suspending proceedings the Registrar shall take action as laid down in paragraph 1 of the section.

Tribunal's power to modify, correct, or remit award.

54A. (1) In the case of any award made by the arbitrators under section 54, the Tribunal may, on the application of any of the parties to the award or otherwise for reasons to be recorded in writing—

(i) modify the award, or

(ii) set it aside and order that the dispute shall be referred back to the arbitrators in the manner provided under the said section: or

(iii) pass such order thereon as it deems just.

Provided that no such order shall be made—

(a) after the issue of a certificate under section 59 for the execution of the award, and

(b) except on any of the following grounds—

(i) an objection to the legality of the award is apparent on the face of it, or

(ii) the award has been vitiated in consequence of corruption or misconduct on the part of any of the arbitrators, or

(iii) the award is in any way perverse.

(2) In making an order under sub-section (1) that the dispute shall be referred back to arbitration, the Tribunal may direct that all or any of the arbitrators who made the award shall not act again as arbitrators for deciding the dispute.

(3) Where a dispute is referred back to arbitration under sub-section (1), the arbitrators shall make a fresh award within such time as may be fixed by the Tribunal. If the arbitrators fail to make a fresh award within the time so fixed, the Registrar or his nominee shall decide the dispute.

(4) When the award is made by the arbitrators under sub-section (3), the Tribunal may, on the application of any of the parties to the award or otherwise for reasons to be recorded in writing—

(i) modify the award, or

(ii) pass such order thereon as it deems just.

To such modification or order the proviso to sub-section (1) shall apply.

(5) The applications under sub-sections (1) and (4) shall be made within two months from the date of the award made by the arbitrators.

Attachment before award.

55. (1) Where a dispute has been referred to the Registrar under section 54 or to arbitration, under clause (g) of section 50, the Registrar or his nominee or the arbitrators, as the case may be, if satisfied on inquiry or otherwise, that a party to such arbitration with intent to delay or obstruct the execution of any award that may be made—

(a) is about to dispose of the whole or any part of his property, or

(b) is about to remove the whole or any part of his property from the jurisdiction of the Registrar,

may unless adequate security is furnished direct the conditional attachment of the said property: and such

attachment shall have the same effect as if made by a competent Civil Court.

(2) The Registrar or his nominee or the arbitrators, as the case may be, may in order to prevent the ends of justice being defeated make such interlocutory orders pending the decision in a dispute referred to in sub-section (1) as may appear to be just and convenient.

Appeal against decision of Registrar and his nominee.

56. Any party aggrieved by any decision of the Registrar or his nominee under section 54 or sub-section (3) of section 54A or an order passed under section 55 by the Registrar or his nominee or arbitrator may, within two months from the date of the decision or order, appeal to the Tribunal:

Provided that—

(a) any appeals filed on or after the 1st day of April, 1948 before the Registrar against the decision or order of his nominee made or passed under section 54, 54A or 55 shall be and are hereby transferred for decision to the Tribunal and shall be disposed of by the Tribunal, as if they were instituted before it under this section;

(b) all appeals which would have been filed before the Tribunal against the decision or order of the Registrar or his nominee made or passed under the aforesaid sections, but which could not be filed only on the ground that the Tribunal was not constituted, may be filed before the Tribunal within a period of one month from the commencement of the Bombay Co-operative Societies (Amendment) Act, 1949 or before the 15th day of June, 1949 whichever date is later, notwithstanding the fact that the period of one month provided by this section may have expired.

57. The award of the arbitrators or a decision by the Registrar or his nominee under section 54 or 54A shall not be liable to be called in question in any civil or revenue court. Finality of order.

58. Wherever in this Act it is provided that the Registrar or person duly authorized by general or special order in writing by the Registrar in this behalf shall hold an inquiry under section 43 or shall make an inspection under section 44 or shall wind up a society or shall arbitrate, such Registrar, or person authorised, as the case may be, shall have the power to summon and enforce the attendance of witnesses including the parties interested or any of them and to compel them to give evidence, and to compel the production of document by the same means and as far as possible in the same manner as is provided in the case of a civil court by the Code of Civil Procedure, 1908. Powers to enforce attendance.

59. (1) Every order passed by a liquidator under section 50, or by the Registrar under sub-section (1) of section 50A or by the Registrar or his nominee or arbitrators on disputes referred to him or them under clause (g) of section 50 or under section 54 or under sub-section (3) of section 54-A, every order passed in appeal under section 56, every order passed in revision under sub-section (6) of section 63-A and every order passed by the State Government in appeal against orders passed under section 50 shall, if not carried out— Money how recovered.

(a) on a certificate signed by the Registrar or a liquidator, be deemed to be a decree of a Civil Court and shall be executed in the same manner as a decree of such Court; or

(b) be executed according to the law and under the rules for the time being in force for the recovery of arrears of land revenue, provided that any application for the recovery in such manner of any sum shall be made to the

Collector and shall be accompanied by a certificate signed by the Registrar or by an Assistant Registrar to whom the said power has been delegated by the Registrar. Such application shall be made within twelve months from that date fixed in the order, or if no such date is fixed, from the date of the order.

Private transfer of property made after issue of certificate void against society.

59-AA. Any private transfer or delivery of, or encumbrance or charge on, property made or created after the issue of the certificate of the Registrar, Liquidator, or Assistant Registrar, as the case may be, under section 59 shall be null and void as against the society on whose application the said certificate was issued.

Transfer of property which cannot be sold.

59-A. (1) When in execution of an order sought to be executed under section 59, any property cannot be sold for want of buyers, if such property is in the occupancy of the defaulter or of some person on his behalf or of some person claiming under a title created by the defaulter subsequently to the issue of the certificate of the Registrar, Liquidator or Assistant Registrar under clause (a) or (b) of sub-section (1), the Court or the Collector, as the case may be, may, with the previous consent of the Registrar, direct that the said property or any portion thereof shall be transferred to the society which has applied for the execution of the said order and that the said property or the portion shall be delivered to the society in the prescribed manner.

(2) Subject to such rules as may be made in this behalf and to any rights, encumbrances, charges or equities lawfully subsisting in favour of any other person, such property or portion thereof shall be held by the said society on such terms and conditions as may be agreed upon between the Court or the Collector, as the case may be, and the said society.

59-B. (1) Notwithstanding anything contained in sections 54 and 59, on an application made by a land mortgage bank for the recovery of arrears of any sum advanced by it to any of its members or by a resource society for the recovery of arrears of any sum advanced by it to any of its members on account of financing of crops or seasonal finance and on its furnishing a statement of accounts in respect of the arrears, the Registrar may, after making such enquiries as he deems fit, grant a certificate for the recovery of the amount stated therein to be due as arrears.

Recovery of moneys due to land mortgage bank.

(2) A certificate granted by the Registrar under sub-section (1) shall be final and conclusive. The arrears stated to be due therein shall be recoverable according to the law for the time being in force for the recovery of land revenue.

(3) It shall bel awful for the Collector to take precautionary measures authorised by sections 140 to 144 of the Bombay Land Revenue Code, 1879, until the arrears due to the land mortgage bank or the resource society together with interest and any incidental charges incurred in the recovery of such arrears are paid or security for payment of such arrears is furnished to the satisfaction of the Registrar.

Explanation: —For the purposes of this section—

(1) a land mortgage bank means the Bombay State Co-operative Land Mortgage Bank or any other co-operative land mortgage bank which is registered under this Act and is a member of that bank.

(2) "financing of crops" and "seasonal finance" shall have the meaning given to them by the Bombay Agricultural Debtors Relief Act, 1947.

CHAPTER IX

Offences

Offences.

60. It shall be an offence under this Act if—

Default by a society officer or member.

(a) a society with a working capital of Rs. 50,000 or more or an officer or member thereof fails without any reasonable excuse to give any notice, send any return or document, do or allow to be done anything which the society, officer or member is by this Act required to give, send, do or allow to be done, or

Wilful neglect or default by a society etc.

(b) a society or an officer or a member thereof wilfully neglects or refuses to do any act or to furnish any information required for the purposes of this Act by the Registrar or other person duly authorised by him in writing in this behalf, or

Wilful furnishing of false information.

(c) a society or an officer or member thereof wilfully makes a false return or furnishes false information, or

Disobedience of summons, requisition or order.

(d) any person wilfully or without any reasonable excuse disobeys any summons, requisition or lawful written order issued under the provisions of this Act or does not furnish any information lawfully required from him by a person authorized to do so under the provisions of this Act.

Penalty for officer sanctioning benami loans.

60-A. Any officer of a society who wilfully recommends or sanctions, for his own personal use or benefit, loan in the name of any other person shall, on conviction, be punishable with fine which may extend to five hundred rupees.

Penalty for offences not otherwise provided for.

61. Every society, officer or member of a society or other person guilty of an offence under this Act for which no penalty is expressly provided herein shall be liable to a fine not exceeding Rs. 50.

Prohibition of the use of the word "co-operative."

62. (1) No person other than a registered society shall without the sanction of the State Government trade or carry on business under any name or title of which

the word "co-operative" or its vernacular equivalent forms part.

Provided that nothing in this section shall apply to the use by any person or his successor in interest of any name or title under which he traded or carried on business at the date on which this Act comes into operation.

(2) Whoever contravenes the provisions of this section shall be punishable with fine which may extend to fifty rupees and in the case of a continuing offence with further fine of five rupees for each day on which the offence is continued after conviction therefor.

Cognizance of offences.

63. (1) No court inferior to that of a Presidency Magistrate or a Magistrate of the First Class shall try any offence under this Act.

(2) Notwithstanding anything contained in the Code of Criminal Procedure, 1898, every offence under this Act shall, for the purposes of the said Code, be deemed to be non-cognizable.

(3) No prosecution under this Act shall be lodged without the previous sanction of the Registrar, which shall not be given except after hearing the party concerned.

CHAPTER X

Appeals and Revision

Bombay Co-operative Tribunal.

63-A. (1) The State Government shall constitute a Tribunal, called the Bombay Co-operative Tribunal, to exercise the functions conferred on the Tribunal by or under this Act.

(2) The Tribunal shall consist of not more than three members possessing such qualifications as may be prescribed.

2-A. Where the Tribunal consists of three members, any two members of the Tribunal shall form the quorum for the disposal of its business.

(3) Any vacancy in the membership of the Tribunal shall be filled by the State Government.

(4) Subject to the previous sanction of the State Government, the Tribunal shall frame regulations consistent with the provisions of this Act and rules made thereunder, for regulating its procedure and the disposal of its business.

(5) The regulations made under sub-section (4) shall be published in the Official Gazette.

(6) The Tribunal may call for and examine the record of any proceedings in which an appeal lies to it for the purpose of satisfying itself as to the legality or propriety of any decision or order passed. If in any case it shall appear to the Tribunal that any such decision or order should be modified, annulled or reversed, the Tribunal may pass such order thereon as to it may seem fit.

6A. Where an appeal is made to the Tribunal under section 56 it may in order to prevent the ends of justice being defeated make such interlocutory orders pending the decision of the appeal as may appear to it to be just and convenient or such orders as may be necessary for the ends of justice or to prevent the abuse of the process of the Tribunal.

(7) An order passed in appeal, or in revision under sub-section (6), by the Tribunal shall be final and conclusive and shall not be liable to be called in question in any civil or revenue court.

Appeals. **64.** An appeal against an order or decision of or sanctioned by the Registrar under sections 10, 16, 45, 47, 50, 50A, may be made by any party aggrieved or affected by the order or decision to the State Government within two months of the date of the communication of the order.

64-I A. In all cases in which it is provided under this Act that an appeal may be filed against any decision or order within a specified period, the appellate authority may admit an appeal after the expiry of such period, if the appellant satisfies the appellate authority that he had sufficient cause for not preferring the appeal within such period.

64-A. The State Government and the Registrar may call for and examine the record of any inquiry or the proceedings of any officer subordinate to them except those referred to in sub-section (6) of section 63A for the purpose of satisfying themselves as to the legality or propriety of any decision or order passed and as to the regularity of the proceedings of such officer. If, in any case, it shall appear to the State Government or the Registrar that any decision or order or proceedings so called for should be modified, annulled or reversed, the State Government or the Registrar, as the case may be, may pass such order thereon as to it or him may seem fit.

Power of State Government and the Registrar to call for proceedings of the subordinate officers and to pass orders thereon.

CHAPTER XI

Farming Societies

64-B. This chapter shall apply to Farming Societies: Provided that the State Government may by general or special order, direct that the provisions of this chapter shall also apply to any other class of societies and thereupon they shall apply as if such societies were Farming Societies.

Application of this chapter

64-C In this chapter, unless there is anything repugnant in the subject or context,—

Definitions.

(a) "Board" means the Board constituted under section 64-D;

(b) deleted.

(c) "Director of Agriculture" means the officer appointed for the time being to be the Director of Agriculture, and includes any officer appointed by the State Government to perform the duties of the Director of Agriculture under this Act ;

(d) "Inquiry Officer" means an officer appointed to hold an inquiry under this chapter ;

(e) "Owner" includes an owner in severalty, in common or joint and includes also an occupant as defined in the Bombay Land Revenue Code, 1879, a permanent tenant or tenant holding a lease for a period of not less than ten years and a mortgagee in possession.

Constitution of Board.

64-D. (1) For the purposes of this chapter there shall be constituted a Board consisting of the Registrar and the Director of Agriculture.

(2) If there is a difference of opinion between the members of the Board regarding any question under the provisions of this chapter, such question shall be referred to the State Government and shall be determined in accordance with the decision of the State Government.

Appointment of an Inquiry Officer and his powers

64-E. (1) The Board shall appoint an Inquiry Officer for the purpose of holding inquiries under this chapter.

(2) For the purpose of such inquiries, the Inquiry Officer shall have—

(a) all the powers of the Registrar under section 58,

(b) power to enter upon, survey and take levels of lands proposed to be included in the scheme, to dig or bore into subsoil and to do all acts necessary for the purpose of the inquiry.

64-F. (1) Persons interested in a farming scheme may make an application to the Registrar for the registration of a Farming society. Such application shall be made in accordance with the provisions of section 9 and shall specify the area affected by the scheme. It shall be accompanied by— Preliminary procedure.

(a) a detailed description and estimate of the cost of such scheme;

(b) the names of such of the owners of the lands to be included in the scheme as may have given their consent to the making of the scheme; and

(c) such other particulars as may be prescribed by rules.

(2) The application together with its accompaniments shall be published in the village or villages and at the headquarters of the taluka within the limits of which the lands proposed to be included in the scheme are situate.

64-G. No Farming society shall be registered under section 10, unless the Board is satisfied, after such inquiry as it thinks necessary, that the scheme proposed by the society is feasible and that not less than 66 per cent of the owners in possession of not less than 75 per cent in aggregate of the land proposed to be included in the scheme have given their consent to the making of the scheme. For this purpose the Board shall record or cause to be recorded— Registration.

(a) a plan showing the area affected by the proposed scheme and the surrounding lands as shown in the map or maps of the village or villages affected;

(b) an examination of the proposed scheme, with any amendments therein proposed by the Board;

(c) an extract from the record of rights showing the name of the owners of the lands, and the areas of the lands to be included in the scheme as approved by the Board ;

(d) statements of such of the owners of such lands as consent to the making of such scheme signed by such owners before the Board or such officer as may be prescribed by rules ;

(e) a detailed estimate of the costs of such scheme ;

(f) a detailed statement showing how the cost is proposed to be met.

Publication of the scheme and inviting claims and objections.

64-H. If the society is registered, the scheme shall be published along with the plans, in the village or villages and at the headquarters of the taluka within the limits of which the lands proposed to be included in the scheme are situate, together with a general notice inviting claims, if any. Separate notices shall, as far as possible, also be served on all owners of lands affected by the scheme and on all persons believed to be interested in the said lands. Such general and separate notices shall require all persons affected by the scheme who make any claims to appear personally or by agent before the Inquiry Officer at a time and place therein mentioned (such time not being earlier than fifteen days after the date of the publication of the scheme).

Inquiry by the Inquiry Officer.

64-I. On the date fixed in the notices issued under section 64-H or any other day to which the inquiry has been adjourned, the Inquiry Officer shall proceed to inquire into the claims (if any) which may have been made pursuant to the notices and shall hear and decide any other matter which may be required to be heard and decided by or under the provisions of this chapter.

Decision of disputed claim.

64-J. (1) If there is a dispute as to the ownership or possession of any piece of land proposed to be included in the scheme, the Inquiry Officer shall decide the

dispute in accordance with the entries relating to such land in the Revenue records kept under any law for the time being in force. If there is no such record, or if in the opinion of the Inquiry Officer the entries in the Revenue record are inaccurate or inconclusive, he shall refer the matter to the Collector for decision. When the Collector decides such dispute, he shall communicate his decision to the Inquiry Officer and such decision shall, subject to the provisions of sub-section (2), be final for the purpose of the inquiry under this Chapter.

(2) In the event of a civil court passing a decree which is inconsistent with such decision, such decision shall be corrected, modified or rescinded in accordance with such decree, after such decree has been brought to the notice of the Inquiry Officer or the Board either by the civil court or by some person affected by such decree.

64-K. (1) After the inquiry under section 64-I is completed, the Inquiry Officer shall make a report to the Board containing the following particulars:— Report of Inquiry Officer.

(i) the names of all the owners of lands affected by the scheme and the nature and extent of the right or interest of each in respect of such land,

(ii) the names of all persons whose rights or liabilities are affected and the manner in which they are affected by the scheme,

(iii) a detailed estimate of the net cost of the scheme to be borne by the society,

(iv) a detailed estimate of the amounts of compensation to be paid to, or of the amounts to be recovered from, persons affected by the scheme,

(v) the manner in which recurring costs of the maintenance of, and other expenses incidental to, the scheme shall be fixed and recovered,

(vi) any other particulars prescribed by or under the Act or the rules.

(2) Such report shall be published in the village or villages and at the headquarters of the taluka within the limits of which the lands included in the scheme are situate and separate notice of such report shall as far as practicable be given to all persons mentioned in clause (ii) of sub-section (1).

(3) Any person aggrieved by the report of the Inquiry Officer may appeal to the Board.

Board may sanction scheme with or without modification or may refuse to give sanction. Appeal

64-L. (1) On receipt of the report of the Inquiry Officer the Board may, in consultation with the Collector, after deciding such appeals as may have been made under section 64-K and making such further inquiry as it may think fit, either sanction with or without modification or refuse to give sanction to the scheme.

(2) Any person aggrieved by the decision of the Board may, within a period of thirty days from the date of such decision, appeal to the State Government, who may pass such order as they deem fit.

Scheme to become final on publication.

(3) If an appeal is made within the period prescribed in sub-section (2) and the State Government decide to sanction the scheme with or without modifications, the scheme as sanctioned by the State Government, or, if no appeal is made within the period aforesaid the scheme as sanctioned by the Board, shall be published in the Official Gazette and in any other way which may be prescribed and shall, on such publication, be final.

Effect of scheme.

64-M. On the day on which the scheme as sanctioned is published under section 64-L, it shall come into force and all the owners of lands included therein, whether they are members of the society or not, shall have such rights and shall be subject to such liabilities as are conferred or imposed on them under the scheme.

Power to enforce scheme.

64-N. On and after the day on which the scheme comes into force the Farming society concerned may, after giving the prescribed notice and in accordance with the provisions of the scheme, execute any work which it is the duty of any person to execute under the scheme. Any expense incurred by the society under this section may be recovered from the persons in default in the manner prescribed in section 64-Q.

Contribution towards the cost of the scheme.

64-O. (1) The cost of the scheme shall be met wholly or in part by a contribution to be levied by the society from each owner of land affected by the scheme including those who may have refused to become members of the society in accordance with the decision of the Board.

(2) The owner of the land affected by the scheme shall be primarily liable for the payment of the contribution leviable in respect of such land.

Dues of farming societies to be first charge

64-P. Subject to the provisions of section 24, any outstanding demands or dues payable to a Farming Society by any member or past member in respect of any rent, shares, loans, contributions, or any other rights or amounts payable to such society shall be a first charge upon his interest in the crops or other agricultural produce on the land included in the scheme.

Recovery of arrears.

64-Q. Any sum due to a society under the provisions of this chapter shall, on application for its recovery being made by such societies, be recoverable by the Collector according to the law and under the rules for the time being in force for the recovery of arrears of land revenue.

Power to exempt Farming societies from provisions of Chapter XI.

64-R. (1) Notwithstanding anything contained in section 64-B, the State Government may, by general or special order to be published in the Official Gazette, exempt any Farming society or class of such societies from any of the provisions of Chapter XI.

(2) Any Farming society in respect of which a certificate of registration has been issued by the Registrar under section 10 before the date on which the Bombay Co-operative Societies (Amendment) Act, 1949, comes into force, shall be deemed to have been validly registered, notwithstanding that any of the provisions of Chapter XI as to registration have not been complied with.

CHAPTER XII

Miscellaneous

Recovery of sums due to the Government.

65. (1) All sums due from a society or from an officer or member or past member of a society as such to the Government, may be recovered according to the law and under the rules for the time being in force for the recovery of arrears of land revenue.

(2) Sums due from a society to the Government and recoverable under sub-section (1) may be recovered, firstly, from the property of the society, secondly, in the case of a society of which the liability of the members is limited, from the members or past members subject to the limit of their liability; and, thirdly in the case of other societies, from the members or past members.

(3) The liability of past members shall in all cases be subject to the provisions of section 28.

Power to exempt societies from conditions as to registration.

66. See sec. 45 of Act II of 1912.

Power to exempt societies from provisions of Act.

67. The State Government may, by general or special order to be published in the Official Gazette, exempt any society or class of societies from any of the provisions of this Act, or may direct that such provisions shall apply to such society or class of societies

with such modifications as may be specified in the order; provided that no order to the prejudice of any society shall be passed without an opportunity being given to such society to represent its case.

Indian Companies Act not to apply.

68. The provisions of the Indian Companies Act of 1913 shall not apply to societies, registered under this Act.

Branches, etc., of societies outside the State.

69. Every Co-operative Society registered outside the Bombay State, which has or establishes a branch or place of business in the Bombay State, shall, within six months from the commencement of this Act or from the establishment of such branch or place of business, file with the Registrar a certified copy of the by-laws and amendments and, if these are not written in the English language, a certified translation in English thereof, and shall submit to the Registrar such returns and information as are submitted by similar societies in the Bombay State in addition to those submitted to the Registrar of the State where it is registered.

Notice necessary in suits.

70. No suit shall be instituted against a society or any of its officers in respect of any act touching the business of the society until the expiration of two months next after notice in writing has been delivered to the Registrar, or left at his office, stating the cause of action, the name, description and place of residence of the plaintiff and the relief which he claims; and the plaint shall contain a statement that such notice has been so delivered or left.

Rules.

71. (1) The State Government may, for the whole or any part of the State and for any society or class of societies, make rules to carry out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power such rules may—

(a) subject to the provisions of section 6, prescribe the maximum number of shares or

portion of the capital of a society which may be held by a member;

(b) prescribe the forms to be used and the conditions to be complied with in the making of applications for the registration of a society and the procedure in the matter of such applications;

(c) prescribe the matters in respect of which a society may or shall make by-laws and the procedure to be followed in making, altering and abrogating by-laws and the conditions to be satisfied prior to such making, alteration or abrogation;

(d) prescribe the conditions to be complied with by persons applying for admission or admitted as members and provide for the election and admission of members and payment to be made and the interest to be acquired before the exercise of the right of membership;

(e) provide for ascertaining the value of a deceased member's share or interest;

(f) provide for general meetings of members and for the procedure at such meetings and the powers to be exercised by such meetings;

(g) provide for the appointment, suspension and removal of the members of the committee and other officers and for the procedure at meetings of the committee and for the powers to be exercised and the duties to be performed by the committee and other officers;

(ga) prescribe the manner of giving notice of the preliminary resolution under sub-section (2) of section 15-A;

(h) prescribe the accounts and books to be kept by a society and provide for the audit of such accounts, and charges if any, to be made for

such audit, and for the periodical publication of a balance sheet showing the assets and liabilities of a society;

(i) prescribe the returns to be submitted by a society to the Registrar and provide for the persons by whom and the form in which such returns shall be submitted;

(j) provide for the persons by whom and the form in which copies of documents or entries in books of societies may be certified, and for the charges to be levied for the supply of such copies;

(k) provide for the formation and maintenance of a register of members, and where the liability of the members is limited by shares, of a register of shares;

(l) prescribe the payments to be made and the conditions to be complied with by members applying for loans and the period for which loans may be made, and the amount which may be lent to an individual member;

(m) prescribe the prohibitions and restrictions subject to which societies may trade or transact business with persons who are not members,

(n) provide for the formation and maintenance of reserve funds, and the objects to which such funds may be applied, and for the investment of any funds under the control of a society;

(na) prescribe the rate at which a society shall contribute towards the educational fund of the Bombay State Co-operative Institute;

(o) prescribe the extent to which a society may limit the number of its members;

(p) prescribe the conditions under which profits may be distributed to the members of a society

and the maximum rate of dividend which may be paid by societies;

(q) prescribe the procedure to be followed in presenting and disposing of appeals;

(qa) prescribe the qualifications of the members of the Tribunal;

(r) provide for securing that the share capital of any society shall be variable in such a way as may be necessary to secure that shares shall not appreciate in value and that necessary capital shall be available for the society as required;

(s) provide that persons qualified under the by-laws of a society shall not be excluded from membership without due cause;

(t) prescribe the procedure to be followed by a liquidator appointed under section 47;

(u) prescribe the mode of appointing an arbitrator or arbitrators and the procedure to be followed in proceedings before the Registrar or such arbitrator or arbitrators and for fixing and levying the expenses of determining the dispute;

(v) provide for the issue and service of processes and for proof of service thereof;

(w) provide for the writing off of bad debts;

(x) regulate the manner in which funds may be raised by means of shares or debentures or otherwise;

(y) provide for the withdrawal and expulsion of members and for the payments to be made to them and for the liabilities of past members;

(z) provide for the nomination of a person to whom the interest of a deceased member may be paid or transferred;

(aa) prescribe the cases in which an appeal shall lie from the order of a liquidator appointed under section 47;

(bb) provide for the inspection of documents in the Registrar's office and the levy of fees for granting certified copies of the same;

(cc) prescribe the procedure to be followed for the custody of property attached under section 55:

(dd) provide for the payment of contribution at such rates and subject to such conditions as may from time to time be prescribed by co-operative societies to any provident fund which may be established for the benefit of officers and servants employed by them;

(ee) prescribe the period and terms under which Government aid may be given to co-operative societies and the terms under which the State Government may guarantee the payment of the principal and interest on debentures issued by registered societies;

(ff) prescribe the particulars to be furnished by the persons applying for the registration of a Crop Protection Society under section 64-F;

(gg) prescribe the officer before whom the statements of owners referred to in section 64-G may be signed;

(hh) prescribe the manner in which the inquiry shall be held by the Board or the Inquiry Officers under Chapter XI;

(ii) prescribe the particulars to be mentioned in an Inquiry Officer's report under clause (vi) of sub-section (1) of section 64-K;

(jj) prescribe the manner in which the scheme shall be published otherwise than in the Official Gazette under sub-section (3) of section 64-L;

(kk) provide for any other matter which is or may be prescribed or for which no provision exists and provision is, in the opinion of the State Government, necessary for the purpose of carrying out of crop protection scheme ,

(ll) prescribing the manner in which any property shall be delivered to, and the terms and conditions subject to which such property shall be held by, a society under section 59-A.

(3) The State Government may, subject to such conditions, if any, as it thinks fit, delegate all or any of its powers to make rules under this section to any authority specified in the order of delegation.

(4) The power to make rules conferred by this section is subject to the condition of the rules being made after previous publication.

(5) The rules so made shall be laid on the table of each of the Chambers of the State Legislature for one month previous to the next session thereof and shall be liable to be rescinded or modified by a resolution in which each of the Chambers concurs at the said next session.

Saving of existing societies.

72. (1) Every society now existing which has been registered under the Co-operative Credit Societies Act, 1904 or under the Co-operative Societies Act, 1912, shall be deemed to be registered under this Act, and its by-laws shall, so far as the same are not inconsistent with the express provisions of this Act, continue in force until altered or rescinded.

(2) All appointments, rules and orders made, notifications and notices issued and suits and other proceedings instituted, under the said Act shall, so far as may be, be deemed to have been respectively made, issued and instituted under this Act.

72-A. All references to the Co-operative Societies Act, 1912, occurring in any enactment made by any authority in British India and for the time being in force in the Presidency of Bombay shall in the application to the said Presidency, of any such enactment, be read and construed as references to this Act and anything done or any proceeding commenced in pursuance of any such enactment on or after the date on which this Act shall have come into operation shall be deemed to have been done or to have been commenced and to have had effect as if the reference in such enactment to the Co-operative Societies Act, 1912, had been the reference to this Act, and no such thing or proceeding shall be deemed to have been invalid on the ground that such enactment did not refer to this Act. Construction of references to co-operative societies Act, 1912. in enactments.

72-B. Where any property is handed over to any society in pursuance of the provisions of sub-section (2) of section 59 prior to its repeal, such transfer to the society shall be deemed to be or to have been invalid and the validity of any term or condition of such transfer agreed between the Collector and the society under the said sub-section or of any rights or liabilities lawfully arising out of such transfer, term or condition shall not be deemed to be or to have been affected by the repeal of the said sub-section or by reason only of the fact that such property was not attached in execution of an order referred to in sub-section (1) of the said section. Validity of transfer made under section 59 (2) of Bombay Act, VII of 1925.

73. The enactments specified in the Schedule are hereby repealed in so far as they apply to the Bombay Presidency to the extent specified in the fourth column of the said Schedule. Repeal.

SCHEDULE

Enactments repealed.

⟨See section 73⟩

Year	No	Short title.	Extent of repeal.
		Acts of the Governor-General in Council.	
1912	II	The Co-operative Societies Act, 1912.	The whole.
1920	XXXVIII	The Devolution Act, 1920	So much as relates to Act II of 1912
		Act of the Governor of Bombay in Council.	
1920	I	The Bombay Land Revenue Code ⟨Amendment⟩ Act, 1920.	The whole.

APPENDIX II

THE MADRAS CO-OPERATIVE SOCIETIES ACT, 1932.

(MADRAS ACT VI OF 1932)

PASSED BY THE LEGISLATIVE COUNCIL OF MADRAS.

(*Received the assent of the Governor on the 9th May 1932 and that of the Governor-General on the 16th June 1932; the assent of the Governor-General was first published in the Fort St. George Gazette on the 5th July, 1932*).

An Act to consolidate and amend the law relating to Co operative societies in the Presidency of Madras.

Whereas it is expedient further to facilitate the formation and working of co-operative societies for the promotion of thrift, self-help and mutual aid among agriculturists and other persons with common economic needs so as to bring about better living, better business and better methods of production and for that purpose to consolidate and amend the law relating to co-operative societies in the Presidency of Madras,

And whereas the previous sanction of the Governor-General has been obtained to the passing of this Act,

It is hereby enacted as follows: —

Preliminary.

Short title and extent.

1. (1) This Act may be called the Madras Co-operative Societies Act, 1932.

(2) It extends to the whole of the State of Madras.

Definitions

2. In this Act, unless there is anything repugnant in the subject or context:—

By-laws.

(a) "by-laws" means the registered by-laws for the time being in force and includes a registered amendment of the by-laws.;

Committee

(b) "committee" means the governing body of a registered society to whom the management of its affairs is entrusted

Financing bank

(c) "financing bank" means a registered society the main object of which is to lend money to other registered societies;

Members

(d) "member" includes a person joining in the application for the registration of a society and a person admitted to membership after registration in accordance with the by-laws and any rules;

Officer

(e) "officer" includes a president, vice-president, chairman, vice-chairman, secretary, assistant secretary, treasurer, member of committee, and any other person empowered under the rules or the by-laws to give directions in regard to the business of the society;

Registered society.

(f) "registered society" means a society registered or deemed to be registered under this Act;

Registrar

(g) "Registrar" means a person appointed to perform the duties of a Registrar of Co-operative Societies under this Act;

Rules

(h) "rules" means rules made under this Act.

Registration

The Registrar.

3. The State Government may appoint a person to be Registrar of Co-operative Societies for the State of Madras or any portion of it and may, by general or special order confer on any other person all or any of the powers of a Registrar under this Act.[1]

1 This section was modified by Madras C.S. Amendment Act (Madras Act of 1937).

4. Subject to the provisions of the Act a society which has as its object the promotion of the economic interests of its members in accordance with co-operative principles, or a society, established with the object of facilitating the operations of such a society, may be registered under this Act with or without limited liability;

Societies which may be registered.

Provided that unless the State Government by general or special order otherwise directs—

(i) the liability of a society of which a member is a registered society shall be limited, and

(ii) the liability of a society of which the primary object is the creation of funds to be lent to its members, and of which the majority of the members are agriculturists, and of which no member is a registered society, shall be unlimited and the members of such a society shall, on its liquidation, be jointly and severally liable for and in respect of all its obligations.

5. (1) Subject to the proviso to section 4 and to any rules made in this behalf, a registered society may, with the previous sanction of the Registrar, change its liability from limited to unlimited or from unlimited to limited.

Change of liability.

Provided that—

(i) the society shall give notice in writing of its intention to change its liability to all its members and creditors:

(ii) any member or creditor shall, notwithstanding any by-law or contract to the contrary, have the option of withdrawing his shares, deposits or loans, as the case may be, within three months of the service of such notice on him and the change shall not take effect until all such claims have been satisfied, and

(iii) any member or creditor, who does not exercise his option within the period aforesaid, shall be deemed to have assented to the change.

(2) Notwithstanding anything contained in the proviso to sub-section (1) the change shall take effect at once if all the members and creditors assent thereto.

Restriction on interest of member of society with limited liability and a share capital.

6. Where the liability of the members of a society is limited by shares, no member other than a registered society shall—

(a) hold more than such portion of the share capital of the society, subject to a maximum of one-fifth, as may be prescribed by the rules; or

(b) have or claim any interest in the shares of the society, exceeding one thousand rupees.

Conditions of registration.

7. (1) No society, other than a society of which a member is a registered society, shall be registered under this Act which does not consist of at least ten persons who have attained the age of majority and, where the object of the society is the creation of funds to be lent to its members, unless such persons—

(a) reside in the same town or village or in the same group of villages; or

(b) save where the Registrar otherwise directs, are members of the same tribe, class, caste or occupation.

(2) The word 'limited' shall be the last word in the name of every society with limited liability registered under this Act.

Power of Registrar to decide certain questions.

8. When any question arises whether for the purposes of this Act a person is an agriculturist or a non-agriculturist, or whether any person is a resident in a town or village or group of villages, or whether two or more villages shall be considered to form a group, or whether any person belongs to any particular tribe, class, caste or occupation the question shall be decided by the Registrar, whose decision shall be final.

9. (1) For purposes of registration an application to register shall be made to the Registrar. Application for registration.

(2) The application shall be signed—

(a) in the case of a society of which no member is a registered society, by at least ten persons qualified in accordance with the requirements of sub-section (1) of section 7; and

(b) in the case of a society of which a member is a registered society, by a duly authorised person on behalf of every such registered society, and, where all the members of the society are not registered societies, by ten other members or, when there are less than ten other members, by all of them.

(3) The application shall be accompanied by a copy of the proposed by-laws of the society, and the persons by whom or on whose behalf such application is made shall furnish such information in regard to the society as the Registrar may require.

10. If the Registrar is satisfied that a society has complied with the provisions of this Act and the rules and that its proposed by-laws are not contrary to this Act or to the rules, he may register the society and its by-laws. In case of refusal, an appeal shall lie to the State Government within two months from the date of the issue of the order of refusal by registered post. Registration

11. A certificate of registration signed by the Registrar shall be conclusive evidence that the society therein mentioned is duly registered unless it is proved that the registration of society has been cancelled. Evidence of registration

12. (1) No amendment of the by-laws of a registered society shall be valid until the same has been registered under this Act, for which purpose a copy of the amendment shall be forwarded to the Registrar. Amendment of the by-laws of registered society.

(2) If the Registrar is satisfied that any amendment of the by-laws is not contrary to this Act or to the

rules, he may register the amendment. In case of refusal an appeal shall lie to the State Government within two months from the date of the issue of the order of refusal by registered post.

(3) When the Registrar registers an amendment of the by-laws of a registered society, he shall issue to the society a copy of the amendment certified by him, which shall be conclusive evidence that the same is duly registered.

Division and amalgamation of societies

13. (a) (1) Any registered society may, at a meeting of its general body specially called for the purpose of which, at least, seven clear days' notice shall be given to its members, resolve to divide itself into two or more societies The resolution (hereinafter in this sub-section referred to as the preliminary resolution) shall contain proposals for the division of the assets and liabilities of the society among the new societies into which it is proposed to divide it and may prescribe the area of operations of, and specify the members who will constitute, each of the new societies.

(2) (i) A copy of the preliminary resolution shall be sent to all the members and creditors of the society.

(ii) Any member of the society may, notwithstanding any by-law to the contrary, by notice given to the society within a period of three months from his receipt of the preliminary resolution, intimate his intention not to become a member of any of the new societies.

(iii) Any creditor of the society may, notwithstanding any agreement to the contrary, by notice given to the society within the said period, intimate his intention to demand a return of the amount due to him.

(3) After the expiry of three months from the receipt of the preliminary resolution by all the members and creditors of the society, a meeting of the general body of the society, of which at least fifteen clear days'

notice shall be given to its members, shall be convened for considering the preliminary resolution. If, at such meeting, the preliminary resolution is confirmed by a resolution passed by a majority of not less than two-thirds of the members present, either without changes or with such changes as, in the opinion of the Registrar, are not material, he may, subject to the provisions of clause (5) and section 10, register the new societies and the by-laws thereof. On such registration the registration of the old society shall be deemed to have been cancelled.

The opinion of the Registrar as to whether the changes made in this preliminary resolution are, or are not material shall be final and no appeal shall lie therefrom.

(4) At the meeting referred to in clause (3) provision shall be made by another resolution for

(i) the repayment of the share capital of all the members who have given notice under sub-clause (ii) of clause (2); and

(ii) the satisfaction of the claims of all the creditors who have given notice under sub-clause (iii) of clause (2);

Provided that no member or creditor shall be entitled to such repayment or satisfaction until the preliminary resolution is confirmed as provided in clause (3).

(5) If, within such time as the Registrar considers reasonable, the share capital of the members referred to in clause (4) is not repaid or the claims of the creditors referred to in that clause are not satisfied, the Registrar may refuse to register the new societies.

(6) The registration of the new societies shall be a sufficient conveyance to vest the assets and liabilities of the original society in the new societies in the manner specified in the preliminary resolution as confirmed under clause (3).

(b) (1) Two or more registered societies may, at meetings of their respective general bodies specially called for the purpose of which at least seven clear days' notice shall be given to their respective members, resolve to amalgamate into one society. This resolution is hereinafter in this sub-section referred to as the preliminary resolution.

(2) (i) A copy of the preliminary resolution of each society shall be sent to all the members and creditors thereof.

(ii) Any member of any such society may, notwithstanding any by-law to the contrary, by notice to the society of which he is a member within a period of three months from his receipt of the preliminary resolution, intimate his intention not to become a member of the new society.

(iii) Any creditor of any such society, may notwithstanding any agreement to the contrary, by notice given to the society of which he is a creditor within the said period, intimate his intention to demand a return of the amount due to him.

(3) After the expiry of three months from the receipt of the preliminary resolution by all the members and creditors of all the societies, a joint meeting of the members of such societies of which at least fifteen clear days' notice shall be given to them, shall be convened for considering the preliminary resolution. If, at such meeting, the preliminary resolution is confirmed, by a resolution passed by a majority of not less than two-thirds of the members present, either without changes or with such changes as in the opinion of the Registrar, are not material, he may, subject to the provisions of clause (5) and section 10, register the new society and the by-laws thereof. On such registration, the registration of the old societies shall be deemed to have been cancelled.

The opinion of the Registrar as to whether the changes made in the preliminary resolution are, or are not material shall be final and no appeal shall lie there from.

(4) At the joint meeting referred to in clause (3), provision shall be made by another resolution for—

(i) the repayment of the share capital of all the members who have given notice under sub-clause (ii) of clause (2), and

(ii) the satisfaction of the claims of all the creditors who have given notice under sub-clause (iii) of clause (2);

(iii) Provided that no member or creditor shall be entitled to such repayment or satisfaction until the preliminary resolution is confirmed as provided in clause (3).

(5) If, within such time as the Registrar considers reasonable, the share capital of the members referred to in clause (4) is not repaid or the claims of the creditors referred to in that clause are not satisfied, the Registrar may refuse to register the new society.

(6) The registration of the new society shall be a sufficient conveyance to vest in it all the assets and liabilities of the original societies.

Rights and Liabilities of Members

Member not to exercise rights till due payment made.

14. (1) No member of a registered society shall, save as otherwise provided in sub-section (2), exercise the rights of a member unless or until he has made such payment to the society in respect of membership or acquired such interest in the society as may be prescribed by the rules and by-laws.

(2) In the case of a society registered after the commencement of this Act, the persons who have signed the application to register the society may elect a committee to conduct the affairs of the society for a

period of three months from the date of registration or for such further period as the Registrar may consider desirable:

Provided that the committee shall cease to function as soon as the members of the society have elected a committee in accordance with its by-laws.

General meetings

15. (1) The committee may at any time call a general meeting of the society and shall call such a meeting within one month after receipt of a requisition in writing from the Registrar or from a financing bank to which the society is indebted or from such number of members or proportion of the total number of members as may be specified in the by-laws of the society.

(2) If a general meeting is not called in accordance with such requisition, the Registrar shall have powers to call a general meeting of the society himself.

Votes of members

16. (1) No member of any registered society shall have more than one vote in the affairs of the society provided that in the case of equality of votes the Chairman shall have a casting vote.

(2) A registered society which has invested any part of its funds in the shares of another registered society may appoint any of its members not disqualified for such appointment under any rules prescribed in that behalf to vote in the affairs of such other registered society.

Restrictions on transfer of shares or interest.

17. (1) The transfer of the share or interest of a member in the capital of a registered society shall be subject to such conditions as to maximum holding as may be prescribed by this Act or by the rules.

(2) In the case of a society registered with unlimited liability a member shall not transfer any share held by him or his interest in the capital of the society or any part thereof unless—

(a) he has held such share or interest for not less than one year; and

(b) the transfer is made to the society or to a member of the society.

Duties of Registered Societies.

18. Every registered society shall have an address, registered in accordance with the rules, to which all notices and communications may be sent, and shall send to the Registrar notice of every change thereof. Address of societies.

19. Every registered society shall keep a copy of this Act and of the rules governing such society and of its by-laws open to inspection free of charge at all reasonable times at the registered address of the society. Copy of Act, rules and by-laws to be open to inspection.

Privileges of Registered Societies

20. The registration of a society shall render it a body corporate by the name under which it is registered with perpetual succession and a common seal and with power to hold property, to enter into contracts, to institute and defend suits and other legal proceedings and to do all things necessary for the purposes for which it was constituted. Societies to be bodies corporate

21. (1) Subject to the prior claim, if any, of the Government in respect of land revenue or any money recoverable as rent, a registered society shall be entitled in priority to other creditors to enforce any outstanding demand due to the society from a member or past or deceased member— Prior claim of society.

(a) in respect of the supply of seed or manure or of the loan of money for the purchase of seed or manure upon the crops or other agricultural produce of such member or person at any time within eighteen months from the date of such supply or loan;

(b) in respect of the supply of cattle, fodder for cattle, agricultural or industrial implements or machinery, or raw materials for manufacture,

or of the loan of money for the purchase of any of the foregoing things—upon any such things so supplied, or purchased in whole or in part from any such loan or on any articles manufactured from raw materials so supplied or purchased.

(2) The priority created by sub-section (1) in favour of a registered society shall be available against any claim of the Government arising from a loan granted under the Land Improvement Loans Act, XIX of 1883, after the grant of the loan by the society.

Charge and set off in respect of shares or interest of members.

22. A registered society shall have a charge upon the share or interest in the capital and on the deposits of a member or past or deceased member and upon any dividend, bonus or profits payable to a member or past member or the estate of a deceased member in respect of any debt due from such member or past member or the estate of such deceased member to the society, and may set off any sum credited or payable to a member or a past or deceased member or the estate of a deceased member in or towards payment of any such debt.

Shares or interest not liable to attachment.

23. Subject to the provisions of section 22, the share or interest of a member in the capital of a registered society shall not be liable to attachment or sale under any decree or order of a Court of Justice in respect of any debt or liability incurred by such member, and neither the Official Assignee under the Presidency Towns Insolvency Act, 1909, nor a Receiver under the Provincial Insolvency Act, 1920, shall be entitled to or have any claim on such share or interest.

Transfer of the interest on death of member.

24. (1) Subject to the provisions of section 22, a registered society may on the death of a member transfer his share or interest in the capital to the person nominated in accordance with the rules made in this behalf, or, if there is no person so nominated, to such person as

may appear to the committee to be the heir, or legal representative of the deceased member, or pay to such nominee, heir or legal representative, as the case may be, a sum representing the value of such member's share or interest, as ascertained in accordance with the rules or by-laws:

Provided that—

(i) in the case of a society with unlimited liability, such nominee, heir or legal representative, as the case may be, may require payment by the society of the value of the share or interest of the deceased member ascertained as aforesaid, and

(ii) in the case of a society with limited liability the society shall transfer the share or interest of the deceased member to such nominee, heir, legal representative, as the case may be, being qualified in accordance with the rules and by-laws for membership of the society, or on his application within one month of the death of the deceased member to any person specified in the application who is so qualified.

(2) subject as aforesaid, a registered society may pay all other moneys due to the deceased member from the society to such nominee, heir or legal representative, as the case may be.

(3) All transfers and payments made by a registered society in accordance with the provisions of this section shall be valid and effectual against any demand made upon the society by any other person.

Liability of past member or of the estate of a deceased member.

25. The liability of a past member or of the estate of a deceased member for the debts of a registered society as they existed on the date of his ceasing to be a member or of his decease, as the case may be shall continue for a period of two years from such date.

Register of members.

26. Any register or list of members or shares kept by any registered society shall be prima facie evidence of any of the following particulars entered therein:—

(a) the date on which the name of any person was entered in such register or list as a member; and

(b) the date on which any such person ceased to be a member.

Proof of entries in society's books.

27. (1) A copy of any entry in a book of a registered society regularly kept in the course of business shall if certified in such manner as may be prescribed by the rules, be received in any suit or legal proceedings as prima facie evidence of the existence of such entry, and shall be admitted as evidence of the matters, transactions and accounts therein recorded in every case where, and to the same extent as, the original entry itself is admissible.

(2) No officer or liquidator of a registered society and no officer in whose office the books of a registered society are deposited after liquidation shall, in any legal proceedings to which the society or the liquidator is not a party, be compelled to produce any of the society's books the contents of which can be proved under sub-section (1), or to appear as a witness to prove the matters, transactions and accounts therein recorded, unless by order of the court or the arbitrator made for special cause.

28. (Omitted by the Madras Act V of 1935).

Exemption from compulsory registration of instruments relating to shares and debentures of registered society.

29. Nothing in clauses (b) and (c) of sub-section (1) of Section 17 of the Indian Registration Act, XVI of 1908, shall apply to

(1) any instrument relating to share in a registered society, notwithstanding that the assets of such society consists in whole or in part of immoveable property; or

(2) any debenture issued by any such society and not creating, declaring, assigning, limiting or extinguishing

any right, title or interest to or in immoveable property except in so far as it entitles the holder to the security afforded by a registered instrument whereby the society has mortgaged, conveyed or otherwise transferred the whole or part of its immoveable property or any interest therein to trustees upon trust for the benefit of the holders of such debentures ; or

(3) any endorsement upon or transfer of any debenture issued by any such society.

29-A Where under this Act or any rule made there under, any sum due to a registered society from any person is recoverable as an arrear of land revenue and the immoveable property of such person is brought to sale under the provisions of the Madras Revenue Recovery Act II of 1864, and the Society is the purchaser at such sale, the provisions of section 36 of the said Act shall apply thereto as if for the third and fourth clause thereof the following clauses were substituted, namely—

Right to set off where a registered society purchases immoveable property at a sale under Madras Act II of 1864 for any sum due to it.

"Third—The sum due to the purchaser shall be set off in whole or in part, against the purchase money and the remainder, if any, of the purchase money shall be paid to the Collector or other officer empowered by the Collector in that behalf within thirty days of the date of sale.

"Fourth—Where the purchaser refuses or omits to complete the payment of the remainder, if any, of the purchase money, the property shall be resold at the expense and hazard of such purchaser and the amount of all loss or expenses which may attend such refusal or omission shall be recoverable from such purchaser in the same manner as arrears of public revenue. Where the property, on the second sale, sells for a higher price than at the first sale, the difference or increase shall be

the property of him on whose account the said first sale was made."[1]

Power to exempt from income-tax, stamp duty and registration fees.

30. (1) The Central Government by notification in the official Gazette may, in the case of any registered society or class of registered societies, remit the income tax payable in respect of the profits of the society, or of the dividends or other payments received by the members of the society on account of profits.

(2) The Government by notification in the Official Gazette, may, in the case of any registered society or class of registered societies remit,

(a) the stamp duty with which, under any law for the time being in force, instruments executed by or on behalf of a registered society or by an officer or member and relating to the business of such society or any class of such instruments or decisions, awards or orders of the Registrar or arbitrators under this Act are respectively chargeable ; and

(b) any fee payable under the law of registration for the time being in force.

In this sub-section, "Government", in relation to stamp duties means the Government which is the collecting Government for the purposes of the Indian Stamp Act, 1899 and save as aforesaid, means the State Government.

Government aid to registered societies.

31. Notwithstanding anything contained in any other enactment, the State Government may, subject to such rules as may be prescribed in this behalf, grant loans to, take shares in, or give financial assistance in any other form to any registered society.

---

1 This section was inserted by the Madras Co-operative Societies (Amendment) Act 1933.

Property and funds of Registered Societies

32. (1) A registered society shall not make a loan to any person other than a member : Restrictions on loans.

Provided that, with the general or special sanction of the Registrar, a registered society may make loans to another registered society.

(2) Save with the sanction of the Registrar, a registered society shall not lend money on the security of moveable property other than agricultural produce.

(3) Notwithstanding anything contained in sub-sections (1) and (2), a registered society may make a loan to a depositor on the security of his deposit.

(4) The State Government may, by general or special order, prohibit or restrict the lending of money on mortgage of immoveable property by any registered society or class of registered societies.

33. A registered society shall receive deposits and loans only to such extent and under such conditions as may be prescribed by the rules or the by-laws of the society. Restrictions on borrowings.

34. (1) Subject to the provision of sub-section (4) of section 32, a registered society may invest or deposit its funds— Investment of funds.

(a) in the Government Savings Bank, or

(b) in any of the securities specified in section 20 of the Indian Trusts Act II of 1882, or

(c) in the shares or securities of any other registered society provided that no such investment shall be made in the shares of any society with unlimited liability, or

(d) with any bank or person carrying on the business of banking, approved for the purpose by the Registrar, or

(e) in any other mode permitted by the rules.

(2) Any investments or deposits made before the commencement of this Act which would have been valid if this Act had been in force are hereby ratified and confirmed.

Funds not to be divided among members.

35. No part of the funds of a registered society shall be divided by way of bonus or dividend or otherwise among its members :

Provided that payment may be made to a member for work done by him as Secretary or as clerk on such scale as may be prescribed by the by-laws :

Provided also that after at least one-fourth of the net profits in any year has been carried to a reserve fund, payments from the remainder of such profits and from any profits of past years available for distribution may be made[1]—

(i) as a bonus to a member for any specific service rendered by him to the society including work done as Secretary or as clerk and

(ii) among the members to such extent and under such conditions as may be prescribed by the rules or by-laws.

Contribution to charitable purposes.

36. Any registered society may, after one-fourth of the net profits in any year has been carried to a reserve fund, contribute an amount not exceeding 10 per cent of the remaining net profits to any charitable purpose as defined in section 2 of the Charitable Endowments Act, VI of 1890.

Audit.

37. (1) The Registrar shall audit or cause to be audited by some person authorised by him by general or special order in writing in this behalf the accounts of every registered society once at least in every year.

(2) The audit under sub-section (1) shall include an examination of overdue debts, if any, the verification of

1 Modified by Madras Act XIV of 1951.

the cash balance and securities and a valuation of the assets and liabilities of the society.

(3) The Registrar or the person authorised by him under sub-section (1) shall, at any reasonable time, have free access to the books, accounts, documents, securities, cash and other properties belonging to or in the custody of the society and may summon any person in possession or responsible for the custody of any such books, accounts, documents, securities, cash or other properties to produce the same at any place at the head-quarters of the society or any branch thereof.

(4) Every officer or member of the society shall furnish such information in regard to the transactions and working of the society as the Registrar or the person authorised by him under sub-section (1) may require.

Inquiry and Inspection

38. (1) The Registrar may of his own motion, and shall on the request of the Collector, or on the application of a majority of the committee or of not less than one-third of the members, hold an inquiry, or direct some person authorised by him by order in writing in this behalf to hold an inquiry into the constitution, working and financial condition of a registered society. Inquiry by Registrar.

(2) The Registrar or the person authorised by him under sub-section (1) shall have the following powers namely :—

(a) He shall, at all reasonable times, have free access to the books, accounts, documents, securities, cash and other properties belonging to or in the custody of the society and may summon any person in possession or responsible for the custody of any such books, accounts, documents, securities, cash or other proper-

ties to produce the same at any place at the headquarters of the society or any branch thereof.

(b) He may summon any person who he has reason to believe has knowledge of any of the affairs of the society to appear before him at any place at the headquarters of the society or any branch thereof and may examine such person on oath.

(c) (i) He may, notwithstanding any rule or by-law prescribing the period of notice for a general meeting of the society, require the officers of the society to call a general meeting at such time and place at the headquarters of the society or any branch thereof and to determine such matters as may be directed by him. If the officers of the society refuse or fail to call such a meeting, he shall have power to call it himself,

(ii) Any meeting called under clause (i) shall have all the powers of a general meeting called under the by-laws of the society and its proceedings shall be regulated by such by-laws.

(3) When an inquiry is made under this section, the Registrar shall communicate the result of the inquiry to the financing Bank, if any, to which the society is indebted.

Inspection of books by Registrar.

39. (1) The Registrar may, on the application of a creditor of a registered society, inspect or direct some person authorised by him in this behalf by a general or special order in writing to inspect the books of the society and the Registrar or the person so authorised shall have all the powers of the Registrar when holding an inquiry under section 38.

(2) No inspection shall be made or directed under sub-section (1) unless the creditor—

(a) satisfies the Registrar that the debt is a sum then due, and that he has demanded payment thereof

and has not received satisfaction within a reasonable time ; and

(b) deposits with the Registrar such sum as security for the costs of the proposed inspection as the Registrar may require.

(3) Where an inspection is made under sub-section (1), the Registrar shall communicate the results of such inspection to the creditor and to the financing bank, if any, to which the society is indebted.

Inspection of books by financing bank.

40. A financing bank shall have the right to inspect the books of any registered society which is indebted to it. The inspection may be made either by an officer of the financing bank or by a member of its paid staff certified by the Registrar as competent to undertake such inspection. The officer or member so inspecting shall at all reasonable times have free access to the books, accounts, documents, securities, cash and other properties belonging to or in the custody of the society and may also call for such information, statements and returns as may be necessary to ascertain the financial condition of the society and the safety of the sums lent to it by the financing bank.

Costs of inquiry and inspectton.

41. Where an inquiry is held under section 38 or an inspection is made under section 39, the Registrar may after giving the parties an opportunity to be heard, apportion the costs, or such part of the costs as he may think right, between the society, the members of creditor bank demanding an inquiry or inspection, the officers or former officers of the society. Costs may also be awarded by the Registrar to the financing bank in the case of inspection under section 40, by the financing bank.

Recovery of costs

42. Any sum awarded by way of costs under section 41 may be recovered as if it were an arrear of land revenue.

Supersession of Committee of Society.

Superses- sion of Committee

43. (1) If, in the opinion of the Registrar, the committee of any registered society is not functioning properly, he may, after giving an opportunity to the committee to state its objections, if any, by order in writing, dissolve the committee and appoint a suitable person or persons to manage the affairs of the society for a specified period not exceeding two years. The period specified in such order may, at the discretion of the Registrar, be extended from time to time provided that such order shall not remain in force for more than four years in the aggregate.

(2) The person or persons so appointed shall, subject to the control of the Registrar and to such instructions as he may trom time to time give have power to exercise all or any of the functions of the committee or of any officer of the society, and to take all such action as may be required in the interests of the society.

(3) The Registrar may fix the remuneration payable to the person or persons so appointed. The amount of such remuneration and the other costs, if any, incurred in the management of the society, shall be payable from its funds.

(4) The person or persons so appointed shall, at the expiry of the period of his or their appointment, arrange for the constitution of a new committee in accordance with the by-laws of the society.

(5) Before taking any action under sub-section (1) in respect of a financing bank or in respect of a society indebted to a financing bank, the Registrar shall consult in the former case the Madras State Co-operative Bank, and in the latter case the financing bank concerned regarding such action.

(6) Nothing in this section shall be deemed to affect the power of the Registrar to cancel the registration of the society under section 44.

Dissolution of Society

44. (1) If the Registrar, after an enquiry has been held under section 38 or after an inspection has been made under section 39 or section 40 or on receipt of an application made by three-fourths of the members of a registered society, is of opinion that the society ought to be dissolved, he may by order in writing cancel the registration of the society. A copy of the order shall forthwith be communicated to the society by registered post. Dissolution

(2) Any member of the society may, within two months from the date of the order made under sub-section (1) appeal to the State Government from such order.

(3) Where no appeal is presented within two months from the making of an order cancelling the registration of the society, the order shall take effect on the expiry of that period.

(4) Where an appeal is presented within two months the order shall not take effect until it is confirmed by the State Government and such confirmation is communicated to the society by registered post.

45. Where it is a condition of the registration of a society that it should consist of at least ten members who have attained the age of majority the Registrar may, by order in writing, cancel the registration of the society if at any time it is proved to his satisfaction, that the number of the members has been reduced to less than ten such members. Cancellation of registration of society.

46. Where the registration of a society is cancelled, the society shall cease to exist as a corporate body— Effect of cancellation of registration

(a) in the case of cancellation in accordance

with the provisions of section 44, from the date the order of cancellation takes effect.

(b) in the case of cancellation in accordance with the provisions of section 45, from the date of the order.

Winding up.

47. (1) Where the registration of a society is cancelled under section 44 or section 45, the Registrar may appoint any person to be liquidator of the society.

(2) Subject to any rules that may be made under this Act, the whole of the assets of the society shall, on the appointment of a liquidator under sub-section (1) vest in such liquidator and he shall have power to realise such assets by sale or otherwise.

(3) Such liquidator shall also have power, subject to the control of the Registrar—

(a) to institute and defend suits and other legal proceedings on behalf of the society by his name of office;

(b) to determine from time to time the contribution to be made or remaining to be made by the members or past members or by the nominees, heirs or legal representatives of deceased members or by any officers or former officers, to the assets of the society, such contribution including debts due from such members or persons;

(c) to investigate all claims against the society and subject to the provisions of this Act to decide questions of priority arising between claimants;

(d) to pay claims against the society (including interest up to the date of cancellation of registration) according to their respective priorities, if any, in full or rateably, as the assets of the society permit; the surplus, if any remaining after payment of the claims being applied in payment of interest from the date

of such cancellation at a rate fixed by him but not exceeding the contract rate in any case;

(e) to determine by what person and in what proportions the costs of the liquidation are to be borne;

(f) to give such directions in regard to the collection and distribution of the assets of the society as may appear to him to be necessary for winding up the affairs of the society; and

(g) to carry on the business of the society so far as may be necessary for the beneficial winding up of the same.

(4) Subject to any rules that may be made under this Act, a liquidator appointed under this section shall, in so far as such powers are necessary for carrying out the purposes of this section, have power to summon and enforce the attendance of witnesses and to compel the production of any books, accounts, documents, securities, cash or other properties belonging to or in the custody of the society by the same means and (so far as may be) in the same manner as is provided in the case of a civil court under the Code of Civil Procedure, 1908.

(5) Any sum ordered under this section to be recovered as a contribution to the assets of the society or as costs of liquidation may be recovered, on a requisition being made in this behalf to the Collector by the Registrar, in the same manner as arrears of land revenue.

(6) Save as provided in sub-section (5), orders made under this section shall, on application, be enforced by any civil court having local jurisdiction in the same manner as a decree of such court.

(7) When the affairs of the society have been wound up, the liquidator shall deposit the records of the society in such place as the Registrar may direct.

(8) Any person aggrieved by any order of the liquidator may appeal to the Registrar against such order

within two months from the date of the issue of the order by registered post.

Bar of suit in certain cases.

48. Save in so far as is expressly provided in this Act, no civil court shall take cognizance of any matter connected with the winding up or dissolution of a society under this Act, and when a liquidator has been appointed no suit or other legal proceedings shall lie or be proceeded with against the society except by leave of the Registrar and subject to such terms as he may impose.

Surcharge and Attachment.

Surcharge.

49. (1) Where in the course of an audit under section 37 or an inquiry under section 38 or an inspection under section 39 or the winding up of a society, it appears that any person who has taken part in the organization or management of the society or any past or present officer of the society has misappropriated or fraudulently retained any money or other property or been guilty of breach of trust in relation to the society, the Registrar may, of his own motion or on the application of the committee or liquidator or of any creditor or contributory, examine into the conduct of such person or officer and make an order requiring him to repay or restore the money or property or any part thereof with interest at such rate as the Registrar thinks just or to contribute such sum to the assets of the society by way of compensation in respect of the misappropriation, fraudulent retainer or breach of trust as the Registrar thinks just.

(2) The order of the Registrar under sub-section (1) shall be final unless it is set aside by the District Court having jurisdiction over the area in which the headquarters of the society are situated or if the headquarters of the society are situated in the City of Madras, by the City Civil Court, on application made by the party aggrieved within three months of the date of receipt of the order by him.

(3) Any sum ordered under this section to be repaid to a society or recovered as a contribution to its assets may be recovered on a requisition being made in this behalf to the Collector by the Registrar in the same manner as arrears of land revenue.

(4) This section shall apply notwithstanding that such person or officer may have incurred criminal liability by his act.

50. Where the Registrar is satisfied on the application of the liquidator or otherwise that any person with intent to defeat or delay the execution of any order that may be passed against him under clause (b) of sub-section (3) of section 47 or section 49— Attachment of property.

(a) is about to dispose of the whole or any part of his property ; or

(b) is about to remove the whole or any part of his property from the local limits of the jurisdiction of the Registrar,

the Registrar may, unless adequate security is furnished, direct the conditional attachment of the said property or such part thereof as he thinks necessary and such attachment shall have the same effect as if it had been made by a competent civil court.

Arbitration

51. (1) If any dispute touching the business of a registered society (other than a dispute regarding disciplinary action taken by the society or its committee against a paid servant of the society), arises— Disputes.

(a) among members, past members and persons claiming through members, past members and deceased members, or

(b) between a member, past member or person claiming through a member, past member or deceased member and the society, its committee or any officer, agent or servant of the society, or

(c) between the society or its committee and any past committee, any officer, agent or servant, or any past officer, past agent or past servant, or the nominee, heirs or legal representatives of any deceased officer, deceased agent or deceased servant of the society, or

(d) between the society and any other registered society, such dispute shall be referred to the Registrar for decision.

Explanation,—A claim by a registered society for any debt or demand due to it from a member, past member or the nominee, heir or legal representative of a deceased member, whether such debt or demand be admitted or not, is a dispute touching the business of the society within the meaning of this sub-section.

(2) The Registrar may, on receipt of such reference,

(a) decide the dispute himself, or

(b) transfer it for disposal to any person who has been invested by the State Government with powers in that behalf, or

(c) subject to such rules as may be prescribed, refer it for disposal to an arbitrator or arbitrators.

(3) subject to such rules as may be prescribed the Registrar may withdraw any reference transferred under clause (b) of sub-section (2) or referred under clause (c) of that sub-section and deal with it in the manner provided in the said sub-section.

(4) Where the Registrar is satisfied that a party to any reference made to him under sub-section (1), with intent to defeat or delay the execution of any decision that may be passed thereon—

(a) is about to dispose of the whole or any part of his property, or

b) is about to remove the whole or any part of

his property from the local limits of the jurisdiction of the Registrar,

the Registrar may, unless adequate security is furnished, direct the conditional attachment of the said property or such part thereof as he thinks necessary, and such attachment shall have the same effect as if it had been made by a competent civil court.

(5) The Registrar may, of his own motion or on the application of a party to a reference, revise any decision thereon by the person to whom such reference was transferred or by the arbitrator or arbitrators to whom it was referred.

(6) (a) Any decision passed by the Registrar under clause (a) of sub-section (2) or under sub-section (5) shall be final and shall not be called in question in any civil or revenue court.

(b) Any decision that may be passed by the person to whom a reference is transferred or by the arbitrator or arbitrators to whom it is referred shall, save as otherwise provided in sub-section (5), be final and shall not be called in question in any civil or revenue court.

Offences and Penalties

52. It shall be an offence under this Act if— Offences.

(a) a registered society or an officer or member thereof, wilfully makes a false return or furnishes false information; or

(b) any person wilfully or without any reasonable excuse disobeys any summons, requisition or lawful written order issued under the provisions of this Act or does not furnish any information lawfully required from him by a

person authorised in this behalf under the provisions of this Act.

Punishment for disposing of property in contravention of section 21

53. Any member or past member or the nominee, heir or legal representative of a deceased member contravening the provisions of section 21 by fraudulently disposing of any property in respect of which the society is entitled to claim priority under that section or doing any other act to the prejudice of such claim, shall be punishable with fine not exceeding two hundred rupees.

Prohibition of the use of the word "co-operative".

54. (1) No person other than a registered society shall trade or carry on business under any name or title of which the word 'co-operative' is part without the sanction of the State Government :

Provided that nothing in the section shall apply to the use by any person or his successor in interest of any name or title under which he traded, or carried on business at the date on which the Co-operative Societies Act, II of 1912, came into operation.

(2) Whoever contravenes the provisions of sub-section (1) shall be punishable with fine which may extend to 50 rupees and in the case of a continuing offence with further fine of five rupees for each day on which the offence is continued after conviction therefor.

Punishment for offences not otherwise provided for.

55. Any registered society or any officer or member thereof or any other person guilty of an offence under this Act for which no punishment is expressly provided herein shall be punishable with fine not exceeding fifty rupees.

Cognizance of offences.

56. (1) No court inferior to that of a Presidency Magistrate or a Magistrate of the first class shall try any offence under this Act.

(2) Every offence under this Act, shall for the purposes of the Code of Criminal Procedure, V of 1898, be deemed to be non-cognizable.

(3) No prosecution shall be instituted under this

Act without the previous sanction of the Registrar, such sanction shall not be given without giving the party concerned an opportunity to be heard.

Miscellaneous.

Power of Government and Registrar to call for proceedings and to pass orders thereon.

57. The State Government or the Registrar may call for and examine the record of any enquiry or the proceedings of any officer subordinate to them for the purpose of satisfying themselves as to the legality or propriety of any decision or order passed and as to the regularity of the proceedings of such officer. If in any case it shall appear to the State Government or the Registrar that any decision or order or proceedings so called for should be modified, annulled, or reversed, the State Government or the Registrar, as the case may be, may pass such order thereon as to it or him may seem fit.

Power of Registrar to recover certain sums by attachment and sale of property.

57A. The Registrar or any person subordinate to him empowered by the Registrar in this behalf, may, subject to such rules as may be prescribed by the State Government and without prejudice to any other mode of recovery provided by or under this Act, recover—

(a) any amount due under a decree or order of a civil court, a decision or an award of the Registrar or arbitrator, or an order of the Registrar, obtained by a registered society including a financing bank or liquidator, or

(b) any sum awarded by way of costs under section 41 to a registered society including a financing bank or to the Government, or

(c) any sum ordered under section 47 to be recovered as a contribution to the assets of a society or as costs of liquidation, or

(d) any sum ordered under section 49 to be repaid to a society or recovered as a contribution to its assets, together with the interest, if any,

due on such amount or sum and the costs of process, by the attachment and sale or by the sale without attachment of the property of the person against whom such decree, decision, award or order has been obtained or passed.

Registrar or person empowered by him to be a civil court for certain purposes.

57B The Registrar or any person empowered by him in that behalf shall be deemed, when exercising any powers under this Act for the recovery of any amount by the attachment and sale or by the sale without attachment of any property, or when passing any orders on an application made to him for such recovery or to take some step in aid of such recovery to be a civil court for the purposes of Article 182 of the First Schedule to the Indian Limitation Act IX of 1908.[1]

57C. Lapsed.

Recovery of sums due to Government.

58. (1) All sums due from a registered society or from an officer, former officer, member or past or deceased member of a registered society as such to the Government including any costs awarded to the Government in any proceeding under this Act may be recovered in the same manner as arrears of land revenue.

(2) Sums due from a registered society to the Government and recoverable under sub-section (1) may be recovered, firstly, from the property of the society; secondly, in the case of a society the liability of the members of which is limited, from the members, past members or the estates of deceased members, subject to the limit of their liability; and thirdly, in the case of other societies from the members, past members or the estates of deceased members.

Provided that the liability of past members and of the estates of deceased members shall in all cases be subject to the provisions of section 25.

1. Inserted by Madras Act V of 1937.

59. Notwithstanding anything contained in this Act, the State Government may, by special order in each case and subject to such condition, if any, as it may impose, exempt any society from any of the requirements of this Act as to registration.

Power to exempt societies from conditions as to registration.

60. The State Government may, by general or special order, exempt any registered society from any of the provisions of this Act or may direct that such provisions shall apply to such society with such modifications as may be specified in the order.

Power to exempt registered societies from provisions of the Act.

Indian Companies Act, 1913, not to apply.

61. The provisions of the Indian Companies Act, VII of 1913, shall not apply to registered societies.

Saving of existing societies.

62. (1) Every society now existing which has been registered under the Co-operative Credit Societies Act, X of 1904, or under the Co-operative Societies Act, II of 1912, shall be deemed to be registered under this Act, and its by-laws shall, so far as the same are not inconsistent with the express provisions of this Act continue in force until altered or rescinded.

Every society which has been registered under the law applicable to Co-operative Societies in the areas which formerly formed part of the State of Pudukkottai, Banganapalle or Sandur and the by-laws of which are not inconsistent with the express provisions of this Act or any rule made thereunder, shall, if the Registrar by an order in writing so declares, be deemed to be registered under this Act and its by-laws shall continue in force until they are altered or rescinded.

(2) All appointments, rules and orders made, notifications and notices issued and suits and other proceedings instituted under the said Act shall, so far as may be, be deemed to have been respectively made, issued and instituted under this Act.

Acts of Societies etc., not to be invalidated by certain defects.

63. No act of a registered society or any committee or of any officer of the society, shall be deemed to be invalid by reason only of some defect in the organisation of the society or in the formation of the general body or in the appointment or election of the officer or on the ground that he was disqualified for his office.

Construction of references to Co-operative Societies Act, 1912 in enactments.

64. All references to the Co-operative Societies Act, 1912, occurring in any enactment made by any authority in India and for the time being in force in the State of Madras shall, in its application to the said State, be construed as references to this Act.

Rules.

65. (1) The State Government may, for the whole or any part of the State of Madras and for any registered society or class of such societies, make rules to carry out all or any of the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may—

(a) subject to the provisions of section 6 prescribe the maximum number of shares or portion of the capital of a society which may be held by a member;

(b) prescribe the forms to be used and the conditions to be complied with in the making of applications for the registration of a society and the procedure in the matter of such applications;

(c) subject to the provisions of section 5 prescribe the procedure to be followed when societies change their form of liability;

(d) prescribe the matters in respect of which a society may or shall make by-laws and for the procedure to be followed in making, altering and abrogating by-laws, and the conditions to be satisfied prior to such making alteration or abrogation;

(e) prescribe the conditions to be complied with by persons applying for admission or admitted as members, and provide for the election and admission of members and the payment to be made and the interests to be acquired before the exercise of the right of membership;

(f) regulate the manner in which funds may be raised by means of shares or debentures or otherwise ;

(g) provide for general meetings of the members and for the procedure at such meetings and the powers to be exercised by such meetings ;

(h) prescribe in the case of financing bank—

(i) the proportion of individual members to society members in the constitution of its general body or of its committee ; and

(ii) the maximum number of members of its committee ;

(i) provide for the appointment, suspension and removal of the members of the committee and other officers and for the procedure at meeting of the committee and for the powers to be exercised and the duties to be performed by the committee and other officers ;

(j) prohibit a society from appointing a defaulting member of any society to its committee or to the committee of any other society and allowing him to exercise his rights of membership in the society or to represent it in another society and vote ;

(k) prescribe the accounts and books to be kept by a society and provide for the audit of such accounts and the charges, if any, to be made for such audit, and for the periodical publication of a balance-sheet showing the assets and liabilities of a society ;

(l) prescribe the returns to be submitted by a society to the Registrar and provide for the persons by whom and the form in which such returns shall be submitted and in case of failure to submit any such return for the levy of the expenses of preparing it ;

(m) provide for the persons by whom and the form in which copies of entries in books of societies may be certified and for the charges to be levied for the supply of such copies ;

(n) provide for the formation and maintenance of a register of members and, where the liability of the members is limited by shares, of a register of shares ;

(o) provide for—

(i) the appointment of an arbitrator or arbitrators to decide disputes ;

(ii) the procedure to be followed in proceedings before the Registrar, arbitrator or arbitrators or other person deciding disputes including the appointment of a guardian for a party to the dispute, who is minor or who by reason of unsoundness of mind or mental infirmity is incapable of protecting his interests ;

(iii) the levy of the expenses incidental to such proceedings ; and

(iv) the enforcement of the decision or awards in such proceedings ;

(p) provide for the withdrawal and expulsion of members and for the payments, if any, to be made to members who withdraw or are expelled and for the liabilities of past members or the estates of deceased members ;

(q) prescribe the prohibitions and restrictions subject to which societies may trade with persons who are not members ;

(r) provide for the mode in which the value of a deceased member's interest shall be ascertained, and for the nomination of a person to whom such interest may be paid or transferred;

(s) prescribe the payments to be made and the conditions to be complied with by members applying for loans, the periods for which loans may be made and the amount which may be lent, to an individual member ;

(t) provide for the formation and maintenance of reserve funds, and the objects to which such funds may be applied, and for the investment of any funds under the control of a society ;

(u) prescribe the extent to which a society may limit the number of its members ;

(v) prescribe the conditions under which profits may be distributed to the members of a society with unlimited liability and the maximum rate of dividend which may be paid by societies ;

(w) prescribe the procedure to be followed by a liquidator appointed under section 47, and provide for the disposal of the surplus assets, if any, of the society;

(x) subject to the provisions of this Act, determine the cases in which an appeal shall lie from the orders of the Registrar, and prescribe the procedure to be followed in presenting and disposing of all appeals under this Act;

(y) prescribe the period for which and the terms under which aid may be given by the State Government to societies and the terms under which the State Government may guarantee the payment of interest on debentures issued by societies;

(z) provide for the custody of property attached under this Act;

(aa) provide for the issue and service of processes and for proof of service thereof;

(bb) provide for the inspection of documents in the Registrar's office and the levy of fees for granting certified copies of the same;

(cc) provide for the investigation of claims and objections that may be preferred against any attachment effected by the Registrar or an officer empowered by him;

(dd) provide for the recovery of costs awarded against the Government in cases under section 49;

(ee) prescribe the procedure for the attachment and sale of property under (section 57A); and

(ff) provide for all matters expressly required or allowed by this Act to be prescribed by rules.

(3) The power to make rules conferred by this section is subject to the condition of the rules being made after previous publication.

(4) All rules made under this section shall be published in the official Gazette and on such publication shall have effect as if enacted in this Act.

(5) All such rules shall be laid before both Houses of the State Legislature.

Repeals

66. The enactment specified in the schedule are hereby repealed in so far as they apply to the State of Madras to the extent specified in the fourth column of the said schedule. Repeals.

Schedule

Year. 1.	Number 2	Short title 3	Extent of repeal. 4
		Acts of the Governor-General in Council.	
1912.	II	The Co-operative Societies Act, 1912.	The whole
1920	XXXVIII	The Devolution Act, 1920.	So much as relates to Act II of 1912..
		Act of the Governor of Madras in Council.	
1920.	X	The Co-operative Societies (Amendment) Act, 1920.	The whole.

APPENDIX III

THE BENGAL CO-OPERATIVE SOCIETIES ACT, 1940.

ACT. XXI OF 1940

An Act to amend the law relating to Co-operative Societies in Bengal.

Whereas it is expedient to make further provision for the formation and working of co-operative societies, and for the promotion of thrift, self-help and mutual aid among persons of moderate means with needs and interests in common, to the end that better conditions of living and better methods of production and business may thereby result, and for that purpose to amend the law relating to co-operative societies in Bengal.

It is hereby enacted as follows :—

CHAPTER I

Preliminary.

Short title, extent and commencement.

1. (1) This Act may be called the Bengal Co-operative Societies Act, 1940.

(2) It extends to the whole of West Bengal.

(3) It shall come into force on such date as the State Government may, by notification in the official Gazette, appoint.

Definitions.

2. In this Act, unless there is anything repugnant in the subject or context:—

(a) "arbitrator" means a person appointed under clause (3) of sub-section (1) of section 87 to decide any dispute referred to him.

(b) "audit officer" means a person authorised under section 76 by general or special order to audit the accounts of a co-operative society,

(c) "by-laws" means the by-laws registered or deemed to have been registered under this Act,

and includes a registered amendment of the by-laws;

(d) "central co-operative land mortgage bank" means a co-operative society, the objects of which include the creation of funds to be lent to co-operative land mortgage banks;

(e) "co-operative land mortgage bank" means a co-operative society, the objects of which include the creation of funds to be lent to members on long terms upon mortgage of their immoveable property;

(f) "co-operative society" means a society registered or deemed to be registered under this Act;

(g) "co-operative society with limited liability" means a co-operative society having the liability of its members limited by its by-laws to the amount, if any, unpaid on the shares respectively held by them or to such amount as they may, respectively thereby undertake to contribute to the assets of the society in the event of its being wound up:

(h) "co-operative society with unlimited liability" means a co-operative society having subject to its by-laws, an unlimited liability of its members to contribute jointly and severally any deficiency in the assets of the society;

(i) "co-operative year" means such period of twelve months as may be prescribed for keeping the accounts of a co-operative society:

(j) "dispute" means any matter capable of being the subject of civil litigation, and includes a claim in respect of any sum payable to or by a co-operative society whether such claim be admitted or not.

k) "financing bank" means a co-operative

society the objects of which include the creation of funds to be lent to other co-operative societies;

(l) "liquidator" means a person appointed under section 90 to wind up the affairs of a co-operative society;

(m) "Managing Committee" means the committee of management of a co-operative society constituted under section 23;

(n) "member" includes a person joining in an application for registration of a society and a person admitted to membership after registration in accordance with the rules and by-laws;

(o) "net profits" means profits after deduction of establishment charges, contingent charges, interest payable on loans and deposits, audit fees and such other sums as may be prescribed;

(p) "officer" includes a president, vice-president, chairman, vice-chairman, secretary, assistant secretary, manager, treasurer, member of a managing committee, auditor elected from among the members and any other person empowered under the rules or by-laws to give directions in regard to the business of a co-operative society:

(q) "prescribed" means prescribed by rules made under this Act;

(r) "Registrar" means a person appointed to perform the duties of a Registrar of Co-operative Societies under this Act and includes any person appointed to assist the Registrar on whom all or any of the powers or duties of the Registrar referred to in section 10 have been or has been conferred or imposed under clause (a) of that section;

(s) "rules" means rules for the time being in force made under this Act,

(t) "Trustee" means the person appointed to be a Trustee under sub-section (1) of section 34.

3. (Repeal):—Rep. by the Bengal Repealing and Amending Act, 1946 (Ben. Act XVI of 1946).

Saving of existing societies etc.

4. (1) Every society existing at the commencement of this Act which has been registered under the Co-operative Societies Act, 1912, shall be deemed to be registered under this Act, and its by-laws shall, in so far as they are not inconsistent with the provisions of this Act, continue in force until altered or rescinded and shall to such extent be deemed to be registered under this Act.

(2) All appointments, rules and orders made, all notifications and notices issued, all transactions entered into and all suits and other proceedings instituted under the Co-operative Societies Act, 1912, shall be deemed, so far as may be, to have been respectively made, issued, entered into or instituted under this Act.

Construction of references to Act II of 1912.

5. All references to the Co-operative Societies Act, 1912 occurring in any enactment for the time being in force in West Bengal shall, in the application of any such enactment thereto, be constructed as references to this Act, and anything done or any proceedings commenced in pursuance of any such enactment or after the commencement of this Act shall be deemed to have been done or to have been commenced and to have had effect as if the reference in such enactment to the Co-operative Societies Act, 1912, had been a reference to this Act, and no such thing or proceeding shall be deemed to have been invalid on the ground that such enactment did not refer to this Act.

Act VII of 1913 not to apply.

6. The provisions of the Indian Companies Act, 1913, shall not apply to co-operative societies.

Prohibition of the use of the word "co-operative".

7. See Sec. 47 of Act II of 1912.

Power to exempt co-operative societies from the provisions of the Act.

8. (1) The State Government may, by rules:—

(a) exempt any co-operative society or class of such societies from the application of any of the provisions of this Act or of any rules made thereunder, or

(b) direct that any of such provisions shall apply to such society or class of societies to such extent as may be specified in the rules.

(2) The power to make rules conferred by sub-section (1) shall be subject to the condition that no rule be made to the prejudice of a co-operative society without giving such society an opportunity to represent its case.

CHAPTER II

Registration

Appointment of Registrar and of persons to assist him.

9. The State Government may appoint a person to be Registrar of Co-operative Societies for West Bengal and may appoint persons to assist him.

Conferment of powers of Registrar

10. Subject to the rules, the State Government may, by general or special order in this behalf, confer all or any of the powers or impose all or any of the duties entrusted to the Registrar by or under this Act, other than those specified in the Second Schedule:—

(a) upon any person appointed under section 9 to assist the Registrar, and

(b) upon any co-operative society in respect of any other co-operative society which is a member of the co-operative society first mentioned.

11. (1) Subject to the provisions of this Act and of any rules, a society which has as its object the promotion of the common interests of its members in accordance with co-operative principles or a society established with the object of facilitating the operation of such a society, including a society formed by the division of an existing co-operative society or amalgamation of existing co-operative societies, may be registered under this Act with or without limited liability. Societies which may be registered.

(2) The word "limited" shall be the last word in the name of a society registered under this Act with limited liability.

12. Unless the State Government by general or special order otherwise directs, a society shall not be registered under this Act— Conditions of registration.

(a) with limited liability, if its objects include the creation of funds to be lent to its members, and if—

(i) it has any withdrawable share capital, or

(ii) the majority of the members are agriculturists and no member is a co-operative society; or

(b) with unlimited liability, if any member is a co-operative society.

13. An application for registration of a society shall be made to the Registrar in the prescribed manner and shall be accompanied by a copy of the proposed bye-laws, and the persons by whom or on whose behalf such application is made shall furnish such information in regard to the society as the Registrar may require. Applications for registration.

Registrar to decide certain questions.

14. The Registrar shall decide all questions as to whether the application complies with the provisions of this Act and the rules and whether the objects of the society are in accordance with section 11.

Registration.

15. See Sec. 9 of Act II of 1912.

Evidence of registration.

16. A certificate of registration signed by the Registrar shall be issued to the society and shall be conclusive evidence that the co-operative society therein mentioned is a co-operative society duly registered under this Act and that its by-laws are as attached to the certificate, unless it is proved that the registration of the society has been cancelled or that the by-laws have been amended in accordance with section 17 or section 18.

Amendment of by-laws of a co-operative society.

17. (1) No amendment of any by-law of a co-operative society, whether by way of addition, cancellation or alteration, shall be valid until such amendment has been registered under this Act,

(2) Every proposal for such amendment, framed in accordance with the rules, shall be forwarded to the Registrar; and if the Registrar is satisfied that the proposed amendment is not contrary to the provisions of the Act or the rules, he shall, unless for reasons to be recorded in writing, he sees fit to refuse, register the amendment.

(3) The Registrar shall forward to the society a copy of the amendment thus registered, together with a certificate signed by him, and such certificate shall be conclusive evidence that the amendment has been duly registered.

Power of financing bank to direct amendment of by-laws.

18. (1) Subject to the rules, if it appears to a financing bank that an amendment of the by-laws of a co-operative society which is a member and a debtor of such bank is necessary or desirable in the interests of such society, it may, in the prescribed manner, call

upon the society to make the amendment within such time as it may specify.

(2) If the society fails to make the amendment within the time specified, the financing bank may, after affording the society an opportunity of being heard, forward to the Registrar the amendment which it considers necessary or desirable, and the Registrar, if satisfied that the amendment is not contrary to the provisions of the Act or the rules, may thereupon register the amendment and forward to the society in the prescribed manner a copy thereof, together with a certificate signed by him which shall be conclusive evidence that the amendment has been registered, and such amendment shall thereupon be binding upon the society and its members.

CHAPTER III

Status and Management of Co-operative Societies

19. See Sec. 18 of Act II of 1912. Co-operative societies to be bodies corporate

20. (1) The final authority of every co-operative society shall vest in the general body of members in general meeting : Final authority of a Co-operative society.

Provided that, in such circumstances as may be prescribed, the final authority may vest in the delegates of such members, elected in the prescribed manner and assembled in general meeting.

(2) The general meeting shall be summoned and shall exercise its authority in such manner as may be prescribed.

Annual general meeting.

21. (1) A general meeting of every co-operative society shall be held once at least in every co-operative year for the purpose of—

(a) electing members of the managing committee and such other officers as may be provided in the by-laws,

(b) considering the audit report referred to in section 79, and

(c) considering any other matter which may be brought forward in accordance with the by-laws.

(2) Such meeting shall be held not more than fifteen months after the date of the last preceding meeting held under sub-section (1) and, unless the Registrar on special grounds extends the period, within three months of the date prescribed for the receipt by the co-operative society of the audit report referred to in section 79;

Provided that the Registrar may, if he thinks fit, permit such meeting to be held not more than eighteen months after the date of the last preceding meeting held under sub-section (1).

Special general meeting.

22. (1) A special general meeting may be called at any time by a majority of the members of the managing committee and shall be called—

(a) on the requisition in writing of one-third of the members of any co-operative society having not more than five hundred members or of one-fifth of the members of any other society; or

(b) at the instance of the Registrar :

Provided that, in the case of any society having more than two thousand five hundred members, a requisition under clause (a) may be presented by delegates elected in the prescribed manner.

(2) The Registrar, or any person authorised by him in this behalf by special order in writing, may call a

general meeting of a co-operative society at any time, and shall call such meeting upon failure of the society to call a meeting on a requisition by the members or at the instance of the Registrar under sub-section (1).

(3) Notwithstanding any rule or by-laws prescribing the period of notice for, and the method of summoning, a general meeting, the Registrar, in the case of a meeting called at his instance under sub-section (1), or the person calling the meeting in the case of a meeting called under sub-section (2), may specify the time and place for the meeting, the manner in which it shall be summoned and the matter which shall be discussed thereat.

23. The management of every co-operative society shall vest in a managing committee, constituted in accordance with the rules and by-laws, which shall exercise such powers and perform such duties as may be conferred or imposed respectively by this Act, the rules and the by-laws. Managing committee

24. The State Government may on the application of a co-operative society and on such conditions as may be prescribed, depute a servant of the Government to the service of the society for the purpose of managing its affairs, and a servant of the Government so deputed shall exercise such powers and perform such duties as may be prescribed. Power to depute servant of the Government to manage affairs of a co-operative society.

25. (1) If the Registrar, after an inspection under section 82 or an inquiry under section 84, is satisfied for reasons to be recorded by him in writing that the managing committee of a co-operative society is mismanaging its affairs, he may, under clause (b) of sub-section (1) of section 22, direct that, within such time as he may determine, special general meeting of the society shall be held to dissolve and reconstitute the managing committee. Dissolution and re-constitution of managing committee.

(2) In any direction made under sub-section (1) the

Registrar may, for reasons to be recorded by him in writing, order that all or any of the members of the outgoing committee shall, for such period not exceeding three years as he may determine, be disqualified for election or appointment as an officer of the society.

Dissolution of managing committee and appointment of person to manage affairs of co-operative society.

26. (I) If the managing committee is not dissolved and reconstituted within the time determined, and in such manner as may be directed by the Registrar under section 25, he may by order dissolve the managing committee, the members of which shall forthwith vacate their office; and the Registrar shall thereupon appoint one or more suitable persons, on such conditions as may be prescribed, to manage the affairs of the co-operative society for such period not exceeding one year, and to arrange for the constitution of a new managing committee by such date, as the Registrar may determine.

Provided that the Provincial Government may extend the period of one year for such further period not exceeding two years as it may think fit.

(2) An order under sub-section (1) shall be in writing, shall set forth the reasons for which it is passed, and shall be passed only after an opportunity has been given to the managing committee to state its objections thereto.

Tenure of office of person appointed under section 26.

27. A person appointed under section 26 shall hold office until the managing committee is reconstituted or his appointment is cancelled by the Registrar.

Management of co-operative society on dissolution of its committee.

28. During the tenure of office of a person appointed under section 26—

(a) all properties of the co-operative society shall vest in the Registrar, and

(b) subject to the control of the Registrar, and notwithstanding the preferring of any appeal under section 134, such person shall exercise

all the powers and perform all the duties which may, under this Act, the rules and the by-laws, be exercised or performed by the managing committee or any officer of the society.

CHAPTER IV

Duties and Obligations of Co-operative Societies

29. Every co-operative society shall have an address, registered in accordance with the rules, to which all notices and communications may be sent, and shall send notice in writing of every change thereof, within thirty days of such change, to the Registrar, and to the financing bank, if any, of which it is a member. Address of co-operative society.

30. Every co-operative society shall keep open to inspection free of charge at all reasonable times at the address of the society— Copy of Act, etc.. to be open to inspection.

(a) a copy of this Act;

(b) a copy of the rules;

(c) a copy of the by-laws of the society;

(d) a register of members; and

(e) such other documents as may be prescribed.

31. The balance sheet authenticated by the audit officer shall be annually published by every co-operative society in the prescribed manner. Publication of annual balance sheet-

32. A co-operative society shall receive deposits and loans from persons who are not members only to such extent and under such conditions as may be prescribed by the rules or by-laws, and shall in respect of such deposits or loans make such provision for the maintenance of fluid resource as may be prescribed. Restrictions on borrowing.

Power of State Government to guarantee principal and interest of debentures.

33. (1) In the case of any debentures or of any class or series or issue of debentures issued under this Act, the State Government shall—

(a) guarantee the principal thereof and the interest thereon, subject to such maximum amount of principal or such rate of interest and to such other conditions as may be prescribed, and

(b) notwithstanding anything contained in the Indian Trusts Act, 1882, declare that such debentures shall be deemed to be included among the securities enumerated in section WO of the said Act.

(2) Such debentures shall not be issued save with the express authority of the State Government.

Issue of guaranteed debentures.

34. (1) When a co-operative society is authorised under the provisions of sub-section (2) of section 33 to receive loans by the issue of debentures, the principal of and interest on which is so guaranteed, the State Government shall appoint the Registrar or some other person to be the Trustee for the purpose of securing the fulfilment of the obligations of the society to the holders of the debentures.

(2) With the previous sanction of the Trustee and subject to such conditions as he may impose, a co-operative society may issue debentures of one or more denominations for such period as it may deem expedient on the security of the assets of the society, including any mortgages which it holds by acceptance, assignment or transfer.

(3) Such debentures may be issued subject to either or both of the following conditions, namely:—

(a) fixing a period, not exceeding thirty years from the date of issue, during which they shall be irredeemable:

(b) reserving to the society the right to call in at

any time any previously issued debentures in advance of the date fixed for redemption, after giving to the debenture-holder concerned not less than three months' notice in writing,

and may be subject also to any other conditions imposed by the Trustee.

(4) The total amount payable in respect of debentures issued by a society (including any debentures issued before the commencement of this Act) and outstanding at any time shall not exceed the total amount due on the mortgages, the amounts paid thereunder and remaining in the hands of the society or of the Trustee at such time and the value of all other assets of the society held by transfer or assignment subsisting at that time.

(5) Where a co-operative society has called in any debenture in advance of the date fixed for redemption, the society shall, subject to the previous permission of the Trustee, have the power to cancel the debenture and issue any new debenture in place of the debenture paid off or otherwise satisfied or extinguished, or to reissue the debenture either by reissuing the same debenture or by issuing another debenture in its place, and by virtue of such reissue the person entitled to such debenture shall have and shall be deemed to have always had, the same rights and priorities, if any, as if the debenture had not been previously issued.

Trustee to be a corporation sole.

35. The Trustee appointed under section 34 shall be a corporation sole by the name of the Trustee for the debentures in respect of which he is appointed, and as such shall have perpetual succession and a common seal and in his corporate name shall sue and be sued.

Power and functions of Trustee.

36. (1) The powers and functions of the Trustee shall be governed by the provisions of this Act and the instrument of trust executed between the co-operative society and the Trustee.

(2) The form of such instrument, and any modification which the parties thereto may mutually agree to make in any of its terms after its execution, shall be subject to the previous approval of the State Government.

Debenture-holders' charge on assets.

37. Upon the issue of debenture under the provisions of sub-section (2) of section 34, the assets of the co-operative society, including any mortgages which it holds by acceptance, assignment or transfer, shall vest in the Trustee and the holders of debentures shall have a floating charge on all such assets, including the amounts paid under such mortgages and remaining in the hands of the Trustee or the society, and on the properties of the society.

Power of State Government to give financial assistance.

38. Notwithstanding anything contained in any other law for the time being in force, the State Government may, subject to the rules, grant loans to, take shares in, or give financial assistance in any other form, to any co-operative society.

Restrictions on lending.

39. (1) A co-operative society shall not make loans

(a) to any person other than a member, or

(b) to a member in excess either of the maximum or of the normal credit determined by the society for that member in accordance with the rules, whichever may be prescribed, or

(c) save with the special sanction of the Registrar given in accordance with the rules, on the security of moveable property.

(2) The State Government may, by general or special order, after giving any society likely to be affected thereby an opportunity of being heard in such manner as may be prescribed, prohibit or restrict the lending of money on mortgage of immoveable property by any society or class of societies other than a co-operative land mortgage bank.

40. Save as provided in sections 32 to 39 inclusive, 48 and 49, the transactions of a co-operative society with persons other than members shall be subject to such prohibitions and restrictions, if any, as may be prescribed. Restrictions on other transactions with non-members.

41. Every officer and every member of a co-operative society shall furnish such information in regard to the transactions or working of the society as may be required of him by the Registrar or an audit officer, arbitrator, liquidator or any person conducting an inspection or inquiry under Chapter VIII. Liability to furnish information.

CHAPTER V

Privileges of Co-operative Societies

42. (1) With the previous approval of the Registrar, a co-operative society may, by a resolution passed at a general meeting, change its name. Change of name & its effects.

(2) Such change of name shall not affect any right or obligation of the society or of any of its members, or past members, or of the estate of any of its deceased members, and any legal proceedings pending on the date of such change in which such society is a party may be continued by or against the society under its new name.

43. (1) Subject to the provisions of this Act and of the rules, a co-operative society, with the previous approval of the Registrar, may, by a resolution passed at a general meeting, change its form of liability. Change of liability.

(2) When such a resolution has been passed, the society shall give notice thereof in writing in the prescribed manner to all its members and creditors and, notwithstanding any by-law or contract to the contrary, any member or creditor shall, within six months of the service of the notice upon him, have the option of withdrawing his shares, deposits or loans. Any member or

creditor who does not exercise his option within the period aforesaid shall be deemed to have assented to the change.

(3) The change shall not take effect until either—

(a) the assent thereto of all members and creditors has been secured, or

(b) all claims of members and creditors who exercise the option referred to in sub-section (2) have been met in full.

Co-operative Society's power to call for a statement of claims.

44. (1) When a member of a co-operative society which includes among its objects the advance of loans to its members applies for a loan or when a person applies for membership of such a society, the society may in the prescribed manner serve a notice on any creditor named in the application or ascertained after subsequent inquiry, and may also publish a general notice on all creditors, requiring him or them, in the prescribed form and within the time specified in the notice, to furnish a written statement of his or their claim.

(2) When a member of a co-operative society which includes among its objects the advance of loans to its members intends to apply for a loan from any person other than the society such member shall send to the society a notice in writing stating—

(a) his intention to apply for such loan,

(b) the amount of the loan for which he intends to apply, and

(c) the object of taking the loan.

Co-operative society's power to call for notice of rent suit.

45. A co-operative society which includes amongst its objects the advance of loans to its members, and the financing bank, if any, by a notice served in the prescribed manner upon the landlord of any member of such society, require the landlord to furnish to such society or the financing bank or both notice of any rent suit instituted by him against such member.

46. Notwithstanding any of the provisions of the Indian Limitation Act, 1908, the period of limitation for the institution of a suit to recover any sum, including interest thereon, due to a co-operative society by a member thereof shall be computed from the date on which such member dies or ceases to be a member of the society. Limitation.

47. (1) Notwithstanding anything contained in sections 60 and 61 of the Code of Civil Procedure, 1908, or in the Bengal Tenancy Act, 1885, but subject to any claim of the State Government in respect of land revenue, or any sum recoverable as land revenue or as a public demand, or of a landlord in respect of rent or any sum recoverable as rent, any debt or outstanding demand due to a co-operative society by any member, past member or the estate of any deceased member shall be a first charge— Debts due to co-operative societies to be a first charge.

(a) if such debt or demand is due in respect of the supply of, or any loan to provide the means of paying for, seed, manure, labour, subsistence, fodder for cattle or any other thing incidental to the conduct of agricultural operations—upon the crops or agricultural produce of such member, past member or belonging to the estate of such deceased member, at any time within two years from the date on which the last instalment of such supply or loan became repayable;

(b) if such debt or demand is due in respect of the supply of, or of any loan to provide the means of paying for, irrigation facilities,—upon the crops or agricultural produce of such member, past member or belonging to estate of such deceased member, at any time within two years from the date on which the last instalment of such supply or loan became

repayable, or upon the crops or agricultural produce of the land so provided with irrigation facilities;

(c) if such debt or demand is due in respect of the supply of, or any loan for the purchase of cattle, agricultural implements or warehouses for the storage of agricultural produce—in the manner and to the extent aforesaid upon the crop or agricultural produce of such member, past member or belonging to the estate of such deceased member and also upon the cattle, agricultural implements or warehouses thus supplied or purchased wholly or in part from any such loan;

(e) if such debt or demand is due in respect of any loan for the purchase or redemption of land, upon the land purchased or redeemed by such member, past member or deceased member from any such loan;

(f) if such debt or demand is due in respect of any loan for the purchase or construction of any house or building or any portion thereof or in respect of the supply of materials for such construction,—upon the house or building so purchased or constructed by such member past member or deceased member from any such loan or material.

(2) Nothing in clauses (a), (c), (d), (e) or (f) of sub-section (1) shall affect the claims of any bonafide purchaser or transferee for value without notice of any such crops or other agricultural produce, fodder, cattle, agricultural or industrial implements, machinery, raw materials, workshops, warehouses, premises, manufactured articles, houses, buildings or land.

48. (1) A co-operative society, an object of which is the provision of irrigational facilities to the cultivable land of its members, may in the prescribed form apply to the Collector for demarcation of the area irrigable from any source of irrigation other than a tank which has, under section 4 of the Bengal Tanks Improvement Act, 1939, been declared to be a derelict tank.

Levy of water rate on non-members.

(2) Such area shall be termed the "irrigable area."

(3) On receipt of such application, the Collector shall, after giving notice in the prescribed manner, cause to be prepared, in the prescribed form, by an officer subordinate to him, a map of the irrigable area and a statement of the cultivable lands included therein, and such map and statement shall be published in the prescribed manner.

(4) If the lands possessed by the members of such society comprise not less than sixty per centum of the cultivable lands included in the irrigable area, such society may, subject to rules made in this behalf, levy a water rate upon any non-member of the society possessing within such area cultivable land which is benefited by the irrigational facilities referred to in sub-section (1).

(5) Such water rate shall be recoverable in the manner provided in this Act for sums due to the society by the members, past members and deceased members thereof.

49. (1) A co-operative society, an object of which is the provision of embankment protection facilities to the lands of its members, may in the prescribed form apply to the Collector for demarcation of the area protected by any embankment.

Levy of embankment protection rate on non-members.

(2) Such area shall be termed the "protected area."

(3) On receipt of such application, the Collector shall, after giving notice in the prescribed manner, cause to be prepared in the prescribed form, by an officer sub-

ordinate to him, a map of the protected area and a statement of the lands included therein, and a copy of such map and statement shall be published in the prescribed manner.

(4) If the lands possessed by the members of such society comprise not less than sixty per centum of the lands included in the protected area, such society may, subject to rules made in this behalf, levy an embankment protection rate upon any non-member of the society possessing land within such area.

(5) Such embankment protection rate shall be recoverable in the manner provided in this Act for the recovery of sums due to the society by the members, past members and deceased members thereof.

Charge and set off in respect of share or interest of members.

50. A co-operative society shall have a charge upon the share or interest in the capital and the deposits of a member or a past or deceased member and upon any amount payable out of profits to a member or past member or the estate of a deceased member in respect of any debt due from such member or past member or the estate of such deceased member to the society and may, subject to the provisions of section 69 to 73 inclusive and of the rules and by-laws set off any sum credited or payable to a member, past member or the estate of a deceased member in or towards the payment of any such debt.

Deduction of dues to co-operative societies from salaries of members.

51. If a member of a co-operative society, who is in the employment of the Crown in India or of any local authority or of any other person, takes a loan from a co-operative society in terms of a written contract to repay such loan by instalments, and authorises the society in writing to recover such instalments by deduction from his salary, the person who disbursed any amount payable to such member as salary in respect of such employment shall, on demand from the society deduct the amount of such instalment from the amount

disbursed to such member as salary and shall forthwith remit to the society the amount so deducted:[1]

〈Provided that nothing in this section shall apply to persons employed upon Federal Railways (within the meaning of the Government of India Act, 1935), or in mines or oil fields〉

52. Nothing in clauses (b) and 〈c〉 of sub-section (1) of section 17 of the Indian Registration Act, 1908, shall apply to— Exemption from compulsory registration of instruments relating to shares and debentures of co-operative society.

〈a〉 any instrument relating to shares in a co-operative society, notwithstanding that the assets of such society consist wholly or in part of immoveable property, or

(b) any debenture issued by any such society and not creating, declaring, assigning, limiting or extinguishing any right, title or interest to or in immoveable property, except in so far as it entitles the holder to the security afforded by a registered instrument whereby the society has mortgaged, conveyed or otherwise transferred the whole or part of its immoveable property or any interest therein to trustees upon trust for the benifit of the holders of such debentures, or

(c) any endorsement upon or transfer of any debenture issued by any such society.

53. (1) The State Government may, by general or special order in the case of any co-operative society or class of co-operative societies, remit any tax, cess or fee payable under any law for the time being in force or the rules framed thereunder in respect of which the State Government is competent to remit such tax, cess or fee. Power to remit certain duties, fees, etc.

(2) In respect of any co-operative society or class

1 Added by the 1st Schedule to the West Bengal Laws (Amendment and Repeal) Act 1947

of co-operative societies the State Government may, by notification in the Official Gazette, remit—

(a) the stamp duty (other than stamp duties falling within item 57 or item 59 in List I in the Seventh Schedule to the Government of India Act 1935) in respect of any instrument executed by, or on behalf of, or in favour of, a co-operative society or by an officer or on behalf of a member thereof and relating to the business of such society, in cases where, but for such remission, the co-operative society, officer or member thereof, as the case may be, would be liable to pay the stamp duty chargeable under any law for the time being in force in respect of such instrument, and

(b) any fee payable by a co-operative society under any law for the time being in force for the registration of documents.

Power of Registrar to sanction a compromise between a co-operative society and its creditors.

54. (1) Notwithstanding anything contained in this Act, where a compromise or arrangement is proposed between a co-operative society and its creditor or creditors or any class of them the Registrar, upon an application made in the prescribed manner by the society or by any creditor or, in the case of a society in respect of which an order has been passed for the winding up thereof, by the liquidator, may order a meeting of the creditors or the class of creditors, as the case may be, to be called, held and conducted in such manner as may be prescribed.

(2) If a majority in number of the creditors or the class of creditors, as the case may be, representing claims to three-fourths of the debts due by the society to the creditors or the class of creditors, present either in person or by proxy at the meeting agree to any compromise or arrangement, the compromise or arrangement shall, if sanctioned by the Registrar, upon publication in the

prescribed manner, be binding on all the creditors or the class of creditors, as the case may be, and also on the society or, in the case of a society in respect of which an order has been passed for the winding up thereof, on the liquidator and on all persons who have been or may be required by the liquidator under section 91 to contribute to the assets of the society.

CHAPTER VI

Property and Funds of Co-operative Societies.

55. A co-operative society may invest or deposit its funds— Investment of funds.

(a) in a Government Savings Bank, or

(b) in any of the securities specified in section 20 of the Indian Trusts Act, 1882, or

(c) with the sanction of the Registrar, in the shares or debentures or on the security of any other co-operative society with limited liability, or

(d) in any other manner prescribed.

56. (1) Every co-operative society shall maintain a reserve fund in respect of the profits, if any, derivable from its transactions. Reserve Fund.

(2) Of the net profits of a co-operative society in each year there shall be carried to the reserve fund not less than twenty-five per centum or such higher proportion as may be prescribed for such society or class of societies.

(3) Save to the extent that, and in such manner as may be prescribed, no part of its reserve fund shall be used in the business of a co-operative society.

(4) Subject to the rules, any portion of the reserve fund not used in the business of the society, shall be invested or deposited—

(a) in the Government Savings Bank, or

(b) in any of the securities specified in section 20

of the Indian Trusts Act, 1882, other than those specified in clause (e) of that section, or

(c) in any other bank approved by the Registrar.

Distribution of profits.

57. (1) Save as may be prescribed, no distribution of profits shall be made in the case of a co-operative society with unlimited liability, and save as provided in this section, no part of the funds of a co-operative society shall be divided by way of dividend or bonus or otherwise among its members.

(2) No dividend or bonus shall be paid—

(a) otherwise than out of profits certified by the audit officer to have been actually realised, or

(b) without the previous sanction of the Registrar, if the audit officer reports that any asset is bad or doubtful and also recommends that such sanction is necessary :

Provided that the audit officer shall not so recommend if such asset is adequately covered.

(3) Subject to the provisions of sub-section (2) after the proportion required by sub-section (2) of section 56 has been carried to the reserve fund from the net profits of any year, the balance of such profits, together with undistributed profits of past years if any, may, to such extent and under such conditions as may be prescribed, be distributed as dividend among the members or paid as bonus or remuneration to a member or employee for any specific service rendered to the society.

(4) No contribution under section 58 shall be paid otherwise than out of profit actually realised.

Contribution to charitable purposes.

58. After there has been carried to the reserve fund the proportion of the net profits of any year required by sub-section (2) of section 56, a co-operative society—

(a) shall, in the manner prescribed, contribute an amount not exceeding five per centum of the balance of the year's remaining net profits for

co-operative education or for such other co-operative purpose as may be prescribed, and

(b) may in accordance with the rules contribute not more than ten per centum of such balance for any charitable purpose as defined in section 2 of the Charitable Endowments Act, 1890.

59. (1) A co-operative society may establish a provident fund for its members, officers or servants from the contributions of such members, officers or servants, as the case may be, and, after there has been carried to the reserve fund the proportion of net profits in any year required by sub-section (2) of section 56 and after there has been paid the contribution required by clause (a) of section 58, may make such contribution to the provident fund as may be provided for in the rules or by-laws. Provident Funds.

(2) Such provident fund shall not be used in the business of the society, but shall be invested or deposited in one or more of the ways specified in sub-section (4) of section 56.

CHAPTER VII

Privileges, Liabilities and Obligations of Members of Co-operative Societies.

60. (1) Subject to the rules relating to voting by delegates, no member of a co-operative society, shall have more than one vote in its affairs. Votes of members.

Provided that in the case of an equality of votes the chairman shall have a second or casting vote.

(2) A co-operative society which is a member of another co-operative society may appoint one of its members not disqualified for such appointment under any rule or by-laws to vote in the affairs of such other society.

Members not to exercise rights till due payment made.

61. No member of a co-operative society shall exercise the rights of a member until he has made such payment to the society in respect of membership or acquired such interest in the society as may be provided for in the rules or by-laws.

Members to furnish information as to their financial position and alienation of their immovable property.

62. (1) A full, true and accurate statement of his assets and liabilities shall be furnished—

(a) by an applicant for membership of a co-operative society with unlimited liability, together with his application,

(b) by a member of a co-operative society with unlimited liability when required to do so by the Registrar or any person authorised by him by a general or special order or by the financing bank, and

(c) by a member of any other society, together with any application for a loan or for acceptance as a surety.

(2) A member of a co-operative society shall, before the completion of each such transaction, furnish to the society of which he is a member full, true and accurate information regarding any sale, mortgage or transfer in any form whatsoever of his immoveable property or any portion or share thereof and regarding any debt proposed to be incurred on the security of such property.

Loans to be used for the object for which advanced.

63. A loan advanced by a co-operative society to a member thereof shall be utilised by him for the purpose for which it was advanced and, if not so utilised, shall be refunded by him immediately on its recall, in the prescribed manner, by the society.

Share or interest not liable to attachment.

64. Notwithstanding anything contained in any law for the time being in force, but subject to the provisions of section 50, the share or interest of a member in the capital of a co-operative society or in any provident fund established under section 59 shall not be liable to

attachment or sale under any decree or order of a court in respect of any debt or liability incurred by such member, and neither the Official Assignee under the Presidency-towns Insolvency Act, 1909, nor a Receiver under the Provincial Insolvency Act, 1920, shall be entitled to or have any claim on such share or interest.

Liability of members.

65. The members of a co-operative society shall, upon the winding up of the society, be jointly and severally liable to contribute towards any deficiency in the assets of the society—

(a) in the case of a society with unlimited liability without limit, and

(b) in the case of a society with limited liability, subject to such limitation of amount as may be provided in the by-laws.

Liability of past members and of estate of deceased member.

66. The liability of a past member and of the estate of a deceased member for the debts of a co-operative society as they existed at the date of his ceasing to be a member or of his death, as the case may be, shall continue for a period of two years from the said date.

Restrictions on interest of members of society with limited liability and share capital.

67. Where the liability of a member of a co-operative society is limited by shares, no member other than another co-operative society shall—

(a) hold more than such portion of the share capital of the society as, subject to a maximum of one-fifth, may be prescribed, or

(b) have or claim any interest in the shares of the society exceeding one thousand rupees.

Restrictions on transfer of share or interest.

68. (1) The transfer or charge of the share or interest of a member in the capital of a co-operative society shall be subject to the provisions of this Act and to such conditions as to maximum holding as may be prescribed and, in the case of member of a society with limited liability shall require the approval of the society.

(2) No transfer or charge of his share or interest by

a member of a society registered with unlimited liability shall be valid unless—

(a) he has held such share or interest (save in the case of transfer under any of the provisions of sections 69, 70, 71, 73 or 74) for not less than one year; and

(b) the transferee or mortgagee is either a member of such society or a person whose application for membership has been accepted or another co-operative society.

Nomination of transferee.

69. If the by-laws of a co-operative society so permit, any member of the society may, in accordance with the rules, nominate a person in whose favour the society shall dispose of the share or interest of such member on his death.

Disposal of deceased member's share or interest.

70. (1) When any member of a co-operative society dies his share and interest in the society shall, subject to the provisions of sections 50 and 68 to the further provisions of this section, be transferred—

(a) to the person, if any, nominated in accordance with the provisions of section 69; or

(b) if thereby no such nominee or, if the existence and residence of such nominee cannot be ascertained by the managing committee, or if for any other cause such transfer cannot be made without unreasonable delay, to the person who (subject to the production by him of probate, letters of administration or succession certificate) appears to the managing committee to be entitled in accordance with the rules to possession of such share or interest as part of the estate of the deceased member; or

(c) on the application of the person referred to in clause (b) within three months of the death of the deceased member, to any person specified in the application.

(2) If the share or interest of the deceased cannot be legally transferred in accordance with the provisions of sub-section (1) or if the person to whom the share or interest is payable under that sub-section within one year of the death of the deceased member claims payment of the value of such share or interest, or if the society in accordance with the rules and by-laws decides to proceed according to this sub-section—

(a) the share shall be transferred to some other person qualified in accordance with the provisions of section 68 to be the transferee of the share, on receipt from such person of the value thereof and

(b) the value of the share or interest of the deceased member determined in accordance with the rules shall be paid to the person nominated in accordance with the provisions of section 69 or to the person appearing to be entitled to possession of such share or interest as aforesaid, after deducting the amount of any sum payable under this Act to the society from the estate of the deceased member.

Disposal of share of interest of resigned or insane member

71. When a member of a co-operative society is expelled or resigns in accordance with the rules or the by-laws, or when a member becomes insane—

(a) his share or interest shall be transferred to another person qualified to be the transferee in accordance with the provisions of section 68, and the value thereof determined in accordance with the rules shall be paid to such member or, if he is insane, to any person appointed to manage his properties under the Indian Lunacy Act, 1912, or

(b) in the case of a society, with unlimited liability if the by-laws so provide, the value of his share or interest determined in accordance with

the rules shall be paid to him or, if he is insane to any person appointed to manage his properties under the Indian Lunacy Act, 1912.

Restriction on transfer of possession of and interest in land held under a co-operative society.

72. Notwithstanding anything contained elsewhere in this Act or in any other law for the time being force—

(1) a member of a co-operative society the object of which is the reclamation and colonization of land or the acquisition of land and the leasing thereof to its members, shall not be entitled to transfer his possession of or interest in any land held by him under the society, except to the society or, with the previous approval of the society given in accordance with its by-laws, to a member thereof;

(2) when the membership of a member of a co-operative society specified in clause (1) terminates by reason of his death, expulsion, resignation or insanity or any other cause, his possession of and interest in any land held by him under the society shall vest in his heir, executor or administrator or in the person, if any, nominated by him under section 69, if such heir, executor, administrator or person is willing to become a member of the society and is eligible for membership in accordance with the by-laws of the society;

(3) if the heir, executor, administrator or person referred to in clause (2) does not become a member of the co-operative society, the possession of and interest in the land of the deceased, expelled, resigned or insane member shall vest in the society, which shall pay to such heir, executor, administrator or person, as the case may be, a sum equivalent to the value of the land as determined in accordance with the rules; and

(4) no land held under a co-operative society specified in clause (1) by a member thereof, or vested under clause (2) in the heir, executor or administrator of such member or in any person nominated by such member under section 69 shall be attachable in any suit or pro-

ceeding for the recovery of any debt other than a debt due to the society or to a member thereof.

73. When an order is passed for the winding up of a co-operative society which is a member of a co-operative society with limited liability, the share or interest of the society being wound up shall, subject to the provisions of section 68, be transferred to another person or co-operative society upon receipt from such person or society of the value, determined in accordance with the rules, of such share or interest, and upon the application of the liquidator the value thereof thus received shall be paid to him.

Disposal of share or interest of a member of a wound up co-operative society.

74. All sums calculated in accordance with the rules to be due from a co-operative society to a member, other than payments in respect of the share or interest of such member to the society, shall, subject to the provisons of section 50, be paid—

Disposal of moneys due to a deceased, expelled, resigned or insane member.

(a) in the case of a deceased member, to the person to whom the share and interest are transferred or their value is paid in accordance with the provisions of section 70,

(b) in the case of a member who has been expelled or has resigned from a society, to him, and

(c) in the case of a member who has become insane, to any person appointed to manage his properties under the Indian Lunacy Act, 1912.

75. All payments and transfers made by a co-operative society in accordance with the provisions of sections 70 to 74 inclusive shall be valid and effectual against any demand made upon the society by any other person.

Bar to certain claims.

CHAPTER VIII

Audit, Inspection and Inquiry

Registrar to be responsible for audit.

76. (1) The accounts of every co-operative society shall, at least once in each year and by the date as may be prescribed, be audited by the Registrar or by an audit officer authorised by him in this behalf by general or special order in writing.

(2) In respect of every audit of the accounts, a co-operative society shall, in the manner prescribed, pay such audit fee as may be prescribed.

Power to Registrar to have the accounts written up.

77. If at that time of audit the accounts of a co-operative society are not complete, the Registrar or, with his approval, the audit officer may cause the accounts to be written up at the expense of the society.

Nature of audit.

78. (1) The audit under section 76 shall include—

(a) a verification of the cash balances and securities;

(b) a verification of the balance at the credit of the depositors and creditors and of the amounts due from the debtors of the society;

(c) an examination of overdue debts, if any;

(d) a valuation of the assets and liabilities of the society;

(e) an examination of the transactions, including the monetary transactions of the society within such limits as may be prescribed;

(f) an examination of the statement of accounts to be prepared by the managing committee in such form as may be prescribed;

(g) a certification of the realised profits; and

(h) any other matter that may be prescribed.

(2) The statement of accounts thus audited, together with the modifications, if any, made therein by the Registrar, shall be final and binding on the co-operative society.

79. The audit officer shall, by such date as may be prescribed, submit to the co-operative society and to the Registrar, together with the statement of accounts audited, an audit report including a statement of— Audit officer's report.

(a) every transaction which appears to him to be contrary to law or to the rules or by-laws;

(b) every sum which ought to have been but has not been brought into account;

(c) the amount of any deficiency or loss which appears to have resulted from any negligence or misconduct or to require further investigation;

(d) any money or property belonging to the society, which appears to have been misappropriated or fraudulently retained by any person;

(e) any of the assets which appears to him to be bad or doubtful; and

(f) any other matter prescribed.

80. A co-operative society shall be afforded by the Registrar an opportunity of explaining any defects or irregularities pointed out by the audit officer, and there after the society shall, within such time and in such manner as the Registrar may direct, remedy such defects and irregularities and report to the Registrar the action taken by it thereon. Rectification of defects.

81. (1) The State Government may constitute an authority to appoint and control in such manner as may be prescribed, the staff required for the supervision of co-operative societies, other than such staff as may be appointed by the State Government for the purpose of such supervision, and such authority, shall be composed of such number of persons and shall perform such functions as may be prescribed. Constitution of an authority to supervise working of co-operative societies.

Provided that, of the persons composing such authority, three-fourths shall be elected by co-operative

societies in such manner as may be prescribed, and one-fourth shall be nominated by the Registrar in such manner as may be prescribed.

(2) A co-operative society, shall be liable to pay, to an authority constituted under sub-section (1), such fee, in such manner, as may be prescribed.

Inspection by Registrar or financing bank.

82. (1) Every co-operative society shall be liable at any time to inspection—

(a) by the Registrar or any person authorised by him in this behalf by general or special order; and

(b) by the financing bank, if any, of which it is a member.

(2) An inspection under this section by a financing bank shall be made by an officer of the bank or by a member of its paid staff certified by the Registrar in accordance with the rules as competent to conduct such an inspection.

(3) The result of an inspection under this section shall be communicated to the society and to the financing bank, if any, of which it is a member and, when the inspection is made by a financing bank, to the Registrar if so required by him.

Inspection of books of an indebted co-operative society.

83. (1) Subject to the provisions of sub-section (2), on the application of a creditor of a co-operative society, an inspection shall be made of the books of the society by the Registrar or by a person authorised by him in this behalf by general or special order in writing.

(2) No such inspection shall be made unless—

(a) the Registrar, after giving the society an opportunity of being heard, is satisfied that the alleged debt is a sum then due, and that the creditor has demanded payment thereof and has not received satisfaction within a reasonable time; and

(b) the creditor deposits with the Registrar such

sum as security for the costs of the inspection as the Registrar may direct.

(3) The Registrar shall communicate the result of any inspection under this section to the creditor, to the society and to the financing bank, if any, of which the society is a member.

84. (1) The Registrar may, at any time, of his own motion or at the request of the District Magistrate, hold by himself or by a person authorised by him by order in writing, an inquiry into the constitution, working and financial condition of a co-operative society. Inquiry by Registrar.

(2) Such an inquiry shall be held on the application of—

(a) the financing bank, if any, of which the society is a member;

(b) a majority of the members of the managing committee of the society;

(c) one-third of the members of the society, each of whom has been a member of the society, for not less than twelve months immediately preceding the date of the application and shall have deposited such security for costs, if any, as the Registrar may direct;

(d) creditors representing not less than one-half of the borrowed capital of the society, who shall have deposited such security for costs, if any, as the Registrar may direct;

Provided that, in the case of any society having more than two thousand five hundred members, an application under clause (c) may be presented by delegates elected in the prescribed manner.

(3) The Registrar shall communicate the result of any inquiry under this section to the society, to the financing bank, if any, of which the society is a member and to the District Magistrate or the creditors, as the case may be, who applied for the enquiry.

Cost of inspection or inquiry.

85. (1) The Registrar may, after giving the parties an opportunity of being heard and by an order in writing stating the reasons therefor, apportion the cost of an inspection made under section 83 or of an inquiry under section 84 of such portion of the costs as he thinks fit, between the co-operative society, the members thereof or the financing bank or the creditor or creditors applying for such inspection or inquiry, as the case may be, and the officers, former officers, members and past members of the society.

(2) No expenditure from the funds of any co-operative society shall be incurred for the purpose of defraying any costs in support of any appeal preferred by any persons other than the society against an order under sub-section (1).

CHAPTER IX

Settlement of Disputes

Disputes to be referred to Registrar.

86. Any dispute touching the business of a co-operative society (other than a dispute regarding disciplinary action taken by a society or its managing committee against a paid servant of the society) or of the liquidator of a society shall be referred to the Registrar if the parties thereto are among the following, namely:—

(a) the society, its managing committee, any past or present officer, agent or servant or the liquidator of the society; or

(b) a member, past member or person claiming through a member, past member or deceased member of the society; or

(c) a surety of a member, past member or deceased member of the society, whether such surety is or is not a member of the society; or

(d) any other co-operative society or the liquidator of such society.

87. (1) On receipt of a reference under section 86 the Registrar shall subject to the rules:— Settlement of disputes.

(a) decide the dispute himself; or

(b) transfer it for disposal to any person authorised by the State Government to exercise the powers of the Registrar in this behalf; or

(c) refer it for disposal to one or more arbitrators to be appointed by the Registrar.

(2) Subject to the rules, the Registrar may withdraw any reference transferred or referred under sub-section (1) and may deal with it himself in the manner provided in such rules.

88. Where a dispute involved property pledged as collateral security, the person deciding the dispute may issue an award, which shall have the same force and effect as a final mortgage decree of a Civil Court having jurisdiction to make such a decree. Force and effect of certain awards.

CHAPTER X

Winding up and Dissolution of Co-operative Societies

89. (1) The Registrar may, and if the rules in any case so prescribe shall, by an order in writing, direct that a co-operative society shall be wound up if— Order for the winding up of a co-operative society.

(a) after an inspection has been made under section 82 or section 83 or an inquiry has been held under section 84; or

(b) on an application made upon a resolution carried by three-fourths of the members of the society present at a special general meeting called for the purpose; or

(c) on his own motion in the case of a society which—

(i) has not commenced working; or

(ii) has ceased working; or

(iii) has share capital or members' deposits not exceeding five hundred rupees, or

(iv) has ceased to comply with any condition as to registration in this Act or in the rules or by-laws,

he is of the opinion that the society ought to be wound up.

(2) A copy of such order shall be communicated, in the prescribed manner, to the society and to the financing bank, if any, of which the society is a member.

(3) The order shall take effect—

(a) Where no appeal is preferred under section 134, on the expiry of the time allowed for preferring an appeal, or

(b) where an appeal is preferred, upon rejection of the appeal by the appellate authority.

Appointment of a liquidator.

90. When an order is passed under section 89 for the winding up of a co-operative society, the Registrar may, in accordance with the rules, appoint a person to be liquidator of the society and may remove such person and appoint another in his place.

Power of a liquidator.

91. (1) Notwithstanding anything contained in section 89 relating to the date on which an order for winding up a co-operative society shall take effect, a liquidator appointed under section 90 shall have power from the date of his appointment to take immediate possession of all assets, properties, effects and actionable claims of the society or to which the society is entitled and of all books records and other documents pertaining to the business of the society.

(2) From the date on which the order directing the winding up of the society takes effect the liquidator shall, subject to the rules and under the general direction and control of the Registrar, have power, so far as is necessary for the winding up of the society, on behalf of the society to carry on the business thereof and to do

all acts and execute all documents necessary to such winding up, and in particular shall exercise such of the following powers as the Registrar may from time to time direct, namely—

(a) to institute and defend suits and other legal proceedings;

(b) to make any compromise or arrangement with any person between whom and the society there exists any dispute and to refer any such dispute to arbitration ;

(c) to determine the debts due to the society by a member, past member or the estate, nominees, heirs or legal representatives of a deceased member ;

(d) to calculate the costs of liquidation and determine by what person and in what proportions they are to be borne ;

(e) to determine from time to time the contributions, including the items mentioned in clauses (c) and (d), to be made to the assets of the society by the members, past members or estates, nominees, heirs and legal representatives of deceased members or by the past or present officers of the society ;

(f) to investigate all claims against the society and subject to the provisions of this Act, to decide questions of priority arising between claimants;

(g) to pay claims against the society (including interest up to the date of the order for the winding up thereof) according to their priority, in full or rateably as the assets of the society permit ;

(h) to give such directions as appear to him to be necessary in regard to the realisation, collection and distribution of the assets of the society ; and

(i) after consulting the members of the society, to dispose of the surplus, if any, remaining after paying the claims against the society.

Priority of contributions assessed by liquidator.

92. Notwithstanding anything contained in the Presidency-towns Insolvency Act, 1909, and the Provincial Insolvency Act, 1920 the contribution assessed by a liquidator shall rank next to debts due to the State or to any local authority in order of priority in insolvency proceeding.

Liquidator to deposit the books and submit a final report.

93. When the affairs of a co-operative society have been wound up, the liquidator shall deposit the records of the society in prescribed manner and shall make a report to the Registrar.

Power of Registrar to cancel order of winding up or of registration of a co-operative society.

94. (1) The Registrar may cancel an order for the winding up of a co-operative society in any case where, in his opinion, the society should continue to exist.

(2) In any other case the Registrar shall, after considering the report of the liquidator, if any, order the registration of the society to be cancelled.

CHAPTER XI

Special provisions for Co-operative Land Mortgage Banks

Right of Co-operative land mortgage bank to pay prior debts of mortgagor.

95. (1) When a mortgage is executed in favour of a co-operative land mortgage bank for payment of a prior debt or part thereof of the mortgagor, the bank shall, notwithstanding the provisions of sections 83 and 84 of the Transfer of Property Act, 1882, by issuing notice in writing in the prescribed manner require any person to whom any such debt is due to receive payment of such debt or part thereof from the bank within such period as may be specified in the notice.

(2) The person on whom such notice is served shall be bound to receive payment of the amount offered by the bank, but where there is a disagreement between

the mortgagor and such person as regards the amount of the debt, the receipt of the sum offered by the bank shall not prejudice the right, if any, of such person to recover the balance claimed by him.

(3) If any person fails to accept such notice or to receive such payments, such debt or part thereof, as the case may be, shall cease to carry interest from the expiry of the period specified in the notice.

Restriction on mortgagor's transfer of or charge on equity of redemption.

96. Notwithstanding anything contained in any other law for the time being in force,—

(1) the mortgagor of property mortgaged to a co-operative land mortgage bank shall not be entitled, after the execution of the mortgage and without the concurrence of the bank,—

(a) to transfer or mortgage his equity of redemption, or to create a charge upon such property for a period exceeding five years,

(2) the co-operative land mortgage bank shall not be entitled to give its concurrence under clause (1) without the previous sanction of the central co-operative land mortgage bank or the financing bank to which any sum is payable by it, and

(3) the central co-operative land mortgage bank or the financing bank shall, if it accords its sanction under clause (2) send an intimation thereof to the Trustee, if any, appointed under section 34.

Mortgage not to be questioned on insolvency of mortgagor.

97. Notwithstanding anything contained in Presidency towns Insolvency Act, 1909 a mortgage, executed in favour of a co-operative land mortgage bank, shall not be called in question on the ground that it was not executed in good faith for valuable consideration or on the ground that it was executed in order to give the bank a preference over the other creditors of the mortgagor.

Priority of mortgage over claims arising under Act XIX of 1883.

98. A mortgage executed in favour of a co-operative land mortgage bank after the commencement of this Act shall have priority over any claim of the State Government arising from a loan under the Land Improvement Loans Act, 1883, granted after the execution of the mortgage.

Power to distrain.

99. (1) If any sum due as an instalment or part of an instalment payable under a mortgage in favour of a co-operative land mortgage bank has remained unpaid for more than one month from the date on which it fell due, the bank may, in addition to any other remedy available to it, apply to the Registrar for the recovery of such sum by distraint and sale of not more than half the produce of the mortgaged land, including the standing crops thereon.

(2) Upon receipt of such application, and notwithstanding anything contained in the Transfer of Property Act, 1882, the Registrar may, subject to the provisions of this Act and the rules, take such action as is necessary to distrain and sell such produce.

(3) No distraint shall be made under this section after the expiry of twelve months from the date on which the instalment fell due.

Distribution of proceeds of sale or distraint.

100. The proceeds of any distraint and sale under section 99 shall be applied as follows :—

First, there shall be paid to the co-operative land mortgage bank at the prescribed rate :—

(a) the cost of the sale : and

(b) the other expenses incurred on account of the distraint :

Secondly, there shall be paid to the bank the amount for which the distraint was made and there shall be given to the person whose property has been sold a receipt for the amount so paid; and

Thirdly, the residue, if any thereafter remaining

shall be delivered to the person whose property has been sold.

101. Notwithstanding anything contained in any other law for the time being in force, where a power of sale without the intervention of the Court is expressly conferred on a co-operative land mortgage bank by a mortgage deed in favour of the bank, if any instalment under such mortgage is not paid in full on the date on which it falls due, the managing committee of the bank shall, in addition to any other remedy available to it, have the power, subject to the provisions of this Act and the rules, to bring the mortgaged property to sale without the intervention of the Court. Power to bring mortgaged property to sale without the intervention of the Court.

102. The Registrar may, subject to the rules, appoint a Sale Officer for the purpose of conducting any sale under the provisions of this chapter. Appointment of Sale Officer.

103. A co-operative land mortgage bank in the exercise of the powers conferred by section 101, shall in the prescribed manner and in the form of a written demand for the payment of the amount due to the bank, issue a notice upon— Notice requiring payment from persons interested.

(a) the mortgagor;

(b) any person who has any interest in or charge upon the right to redeem the said property and who has previously notified the bank in writing of such interest or charge;

(c) any surety for the payment of the mortgage debt or any part thereof; and

(d) any creditor of the mortgagor who has in a suit for the administration of his estate obtained a decree for sale of the mortgaged property.

104. Upon the expiry of three months from the date of service of a notice under section 103 if the sum due under the mortgage has not been paid the bank may, after considering any objection made within that period by person entitled to such notice apply to the Sale Application for sale and method of sale.

Officer appointed under section 102 to sell the mortgaged property or any part thereof and such officer shall, in the prescribed manner, proceed to sell such property by public auction and report the result thereof to the bank.

Application to set aside a sale on deposit.

105. When property mortgaged to a co-operative land mortgage bank had been sold under the provisions of this chapter, the mortgagor or any person entitled to a notice under section 103 may within the prescribed period apply to the managing committee of the bank to have the sale set aside upon his depositing with the bank—

(a) for payment to the bank, the amount specified in the proclamation of sale together with the subsequent interest and the costs, if any incurred by the bank in bringing the property to sale; and

(b) for payment to the purchaser as compensation, a sum equal to five per centum of the purchase money.

Setting aside and confirmation of sales.

106. (1) After the expiry of the period prescribed for making an application to have the sale set aside, the bank shall, in the prescribed manner, submit to the Registrar a report setting forth the proceedings of the Sale Officer, the result of the sale and details of any application made under section 105.

(2) Upon receipt of such report the Registrar shall

(a) if an application has been made under section 105 and if the amounts specified in that section have been deposited by the applicant, make an order setting aside the sale and requiring the bank to pay to the purchaser the sum deposited under clause (b) of section 105; and

(b) if no application has been made under section 105 or an application has been made but the amount specified in that section has not been deposited by the applicant, or an application

has been disallowed by the bank, make an order confirming the sale.

(3) Where an order confirming a sale is made under sub-section (2) the sale shall thereupon become absolute.

Distribution of sale proceeds and bar to certain claims.

107. (1) The Registrar shall, in making a sale absolute by an order under section 106, direct that the sale-proceeds shall be applied as follows:—First, there shall be paid to the co-operative land mortgage bank, at the prescribed rate, all costs charges and expenses properly incurred by the bank or the Sale Officer incidental to the sale or any attempted sale.

Secondly, there shall be paid to the bank all interest due on account of the mortgage in consequence whereof the mortgaged property was sold; Thirdly, there shall be paid to the bank all sums due as principal on account of the mortgage; and Fourthly, the residue, if any, thereafter remaining shall be paid to the mortgagor.

(2) All payments of such residue made in accordance with sub-section (1) shall be valid and effectual against any demand relating thereto made upon the bank by the mortgagor or by any other person.

Certificate to be issued to purchaser and to be entered by the registering officer.

108. (1) Where a sale of mortgaged property under this chapter has become absolute, the Registrar shall grant to the purchaser a certificate in the prescribed form specifying the property sold and the name of the person who, at the time of sale, is declared to be the purchaser and such certificate shall bear the date of the day on which the sale becomes absolute.

(2) Notwithstanding anything contained in the Indian Registration Act, 1908 the Registrar shall send a copy of every certificate granted under sub-section (1) to the Registering officer appointed under that Act within the local limits of whose jurisdiction the whole or any part of the immoveable property comprised in such certificate is situated, and such registering officer shall enter

the contents of such copy in his register of non-testamentary documents relating to immovable property.

(3) The purchaser of any mortgaged property sold under this chapter shall supply to the Registrar notices in the prescribed form for service on the landlord's fee, if any, required under the Bengal Tenancy Act, 1885, and the Registrar shall thereupon, in the prescribed manner, cause such notices to be served on, and such landlord's fee to be transmitted to, the landlord named in such notices.

Delivery of property to purchaser.

109. Where a certificate has been issued under section 108, the Court shall, on the application of the purchaser, order delivery of possession to be made to him in the prescribed manner. Explanation—In this section "Court" means the Civil Court which would have jurisdiction to entertain a suit to enforce the mortgage and within the limits of whose jurisdiction the property sold is situated.

Right of co-operative land mortgage bank or central co-operative land mortgage bank to purchase at a sale under this chapter.

110. It shall be competent to a co-operative land mortgage bank or central co-operative land mortgage bank to purchase the mortgaged property sold under this chapter, but the property so purchased shall be disposed of by such bank by sale within the period prescribed or, where a Trustee has been appointed, within such period as he may specify in accordance with the rules.

Title of purchaser not to be questioned.

111. Where a sale has been made in exercise of a power to sell under section 101 and has been confirmed under clause (b) of sub-section (2) of section 106, the title of the purchaser shall not be questioned in any Court by the mortgagor or his successor in interest.

Power to appoint a receiver.

112. (1) In circumstances in which the power of sale under section 101 might be exercised, the Registrar may subject to the provisions of sub-section (2), and in accordance with the rules—

(a) on the application of a co-operative land

mortgage bank, appoint a receiver of the produce and income of the mortgaged property:

(b) on the application of the mortgagor for due cause shown, remove a receiver so appointed, and

(c) fill up a vacancy in the office of receiver.

(2) The Registrar shall not appoint a receiver where the mortgaged property is already in the possession of a receiver appointed by a Court.

Expenses, remuneration and duties of a receiver.

113. (1) A receiver appointed under section 112 shall be entitled, in accordance with the rules, to receive such expenses of management and remuneration, if any, as may be determined by the Registrar in consultation with the co-operative land mortgage bank.

(2) The provisions of sub-section (8) of sec. 69A of the Transfer of Property Act, 1882, shall apply to a receiver appointed under section 112.

Powers of co-operative land mortgage bank if the mortgaged property is destroyed or the security is rendered insufficient.

114. Where any property mortgaged to a co-operative land mortgage bank is wholly or partially destroyed or the security is rendered insufficient and the mortgagor, after reasonable opportunity given by the bank to provide such further security as will render the whole security sufficient to repay such portion of the loan as may be determined by the bank, has failed so to do, the whole of the loan shall be deemed to fall due at once and the bank shall, subject to the rules, be entitled to take action against the mortgagor for the recovery thereof under this chapter.

Explanation—A security shall be deemed to be insufficient within the meaning of this section if the value of the mortgaged property does not exceed the amount for the time being due on the mortgage by such proportion as may be specified in the rules or by-laws.

Power of the Trustee and a central co-operative land mortgage bank to direct or take certain action.

115. (1) A Trustee and, in the case of a member society, a central co-operative land mortgage bank may, in accordance with the rules, direct a co-operative land mortgage bank to take action against a defaulter under section 99, section 101 or section 114 and, if the bank neglects or fails to do so, may take such action.

(2) Where such action is taken by a Trustee or a Central co-operative land mortgage bank, the provisions of this Act and of any rules or by-laws shall apply in respect thereto as if all references to the co-operative land mortgage bank were references to the Trustee or the central co-operative land mortgage bank, as the case may be.

Officers of co-operative land mortgage and central co-operative land mortgage banks and Sale Officers not to bid at sales.

116. At any sale of moveable or immoveable property held under the provisions of this chapter no officer of a co-operative land mortgage bank or central co-operative land mortgage bank (except on behalf of the bank of which he is an officer), and no Sale Officer or other person having any duty to perform in connection with such sale, shall either directly or indirectly bid for or acquire or attempt to acquire any interest in such property.

Notice of sale under Chapter XIV of Act VII of 1885.

117. Notwithstanding anything contained in Chapter XIV of the Bengal Tenancy Act, 1885, relating to the sale of tenures and holdings in execution of decrees for arrears of rent, no such sale held under the provisions of that chapter shall affect the title or interest of any co-operative land mortgage bank which has, in respect of such tenure or holding, a registered and notified encumbrance within the meaning of clause (b) of section 161 of the said Act, unless a concise statement of the order of attachment and proclamation of sale has, in the prescribed manner and at the time of the issue of such proclamation, been sent by the Court by registered post to such co-operative land mortgage bank.

118. Notwithstanding anything contained in the Bengal Patni Taluks Regulation, 1819 (hereinafter in this section referred to as the said Regulation)— *Notice of sale and deposit for protection from sale, under Bengal Regulation VIII of 1819.*

(1) When a mortgage is executed in favour of a co-operative land mortgage bank in respect of any Patni taluk to which the said Regulation applies or any tenure or holding comprised within such Patni taluk, the co-operative land mortgage bank shall—

- (a) in such manner as may be prescribed, notify the Zamindar of the execution of such mortgage,
- (b) for the purpose of receiving notice of the sale of such Patni taluk or tenure as the case may be, pay to the Zamindar such fee in such manner as may be prescribed, and
- (c) on compliance with the provisions of sub-clauses (a) and (b), be deemed to be a notified mortgagee in respect of such Patni taluk or tenure,

(2) before the sale is held of any such Patni taluk or tenure under the said Regulation, the Zamindar shall by registered post, send a notice thereof to every co-operative land mortgage bank which is, in respect of such Patni taluk or tenure, a notified mortgagee within the meaning of sub-clause (c) of clause (1); and

(3) any co-operative land mortgage bank which is a notified mortgagee within the meaning of sub-clause (c) of clause (1) shall be entitled to stay such sale by depositing with the Collector the balance of the arrears of rent due in respect of such Patni taluk or tenure.

119. Notwithstanding anything contained in the Bengal Land-revenue Sales Act, 1859, or the Bengal Land-revenue Sales Act, 1868 (hereinafter in this *Notice of sale and deposit*

for protection from sale under Act XI of 1859 or Act VII of 1868.

section referred to respectively as the said Act of 1859 and the said Act of 1868)—

(1) when a mortgage is executed in favour of a co-operative land mortgage bank in respect of any revenue-paying estate to which the said Act of 1859 applies or any tenure or holding comprised within such estate, or any revenue-paying tenure to which the said Act of 1868 applies or any tenure or holding comprised within such tenure, the co-operative land mortgage bank shall—

(a) in such manner as may be prescribed, notify the Collector of the execution of such mortgage,

(b) for the purpose of receiving notice of the sale of such estate or tenure as the case may be, pay to the Collector such fee in such manner as may be prescribed, and

(c) on compliance with the provisions of sub-clauses (a) and (b), be deemed to be a notified mortgagee in respect of such estate or tenure as the case may be;

(2) before the sale is held of any such estate under the said Act of 1859, or of any such tenure under the said Act of 1868, the Collector shall, by registered post, send a notice thereof to every co-operative land mortgage bank which is, in respect of such estate or tenure as the case may be, a notified mortgagee within the meaning of sub-clause (c) of clause (1); and

(3) any co-operative land mortgage bank which is a notified mortgagee within the meaning of sub-clause (c) of clause (1) shall be entitled to stay such sale by depositing with the Collector the balance of the arrears of land-revenue due in respect of such estate or tenure as the case may be.

120. (1) Notwithstanding anything contained in the

Indian Registration Act, 1908, it shall not be necessary for a Trustee or for any officer of a co-operative land mortgage bank to appear in person or by agent at any registration office in any proceeding connected with the registration of any instrument executed by him in his official capacity or to sign as provided in section 58 of that Act.

Exemption from personal attendance for registration of certain instruments.

(2) Where any instrument is so executed, the registering officer to whom such instrument is presented for registration may, if he thinks fit, refer to the Trustee or to such officer for any information respecting the same and on being satisfied of the execution thereof shall register the instrument.

Power of co-operative land mortgage bank to receive money etc., notwithstanding assignment or transfer of mortgage deeds to a central co-operative land mortgage bank.

121. Notwithstanding any assignment or transfer of any mortgage by a co-operative land mortgage bank to a central co-operative land mortgage bank—

(a) all money due under the mortgage shall, in the absence of any specific direction to the contrary issued by the Registrar or a Trustee in accordance with the rules and communicated to the mortgagor, be payable to the co-operative land mortgage bank and such payment shall be as valid as if the mortgage had not been so assigned or transferred; and

(b) the co-operative land mortgage bank shall, in the absence of any such direction communicated to it, be entitled to sue on the mortgage or take any other proceeding for the recovery of the moneys due under the mortgage.

Mortgages executed by members of joint Hindu families.

122 (1) Where a mortgage executed in favour of a co-operative land mortgage bank, whether before or after the commencement of this Act, is called in question on the ground that it was executed by the manager of a joint Hindu family for a purpose not binding on the members thereof whether major or minor, the burden of proof shall, notwithstanding anything contained in any

other law for the time being in force, rest upon the party which calls such mortgage in question,

(2) For the purpose of this Section the following shall be regarded as purposes binding on members of a joint Hindu family:—

(a) the improvement of agricultural land or of the methods of cultivation, and

(b) the purchase of land.

CHAPTER XII

Enforcement of obligations and recovery of sums due

Access to documents, etc.

123. The Registrar and, subject to any restrictions prescribed an audit officer, arbitrator or any person conducting an inspection or inquiry under Chapter VIII, shall at all reasonable times have free access to the books, accounts, documents, securities, cash and other properties belonging to or in the custody of a co-operative society.

Power to enforce attendance of witness and production of documents.

124. The Registrar and, subject to any restrictions prescribed an audit officer, arbitrator or liquidator, or any person conducting an inspection or inquiry under Chapter VIII, shall, in so far as is necessary for carrying out of any of the purposes of this Act, have power to summon and enforce the attendance of witnesses and parties concerned and to examine them upon oath and to compel the production of any books, accounts, documents, securities, cash and other properties by the same means and, so far as may be, in the same manner as provided in the Code of Civil Procedure, 1908.

Power to direct conditional attachment.

125. (1) Subject to the rules, the Registrar, if it appears to him that any person or co-operative society with intent to defeat or delay the execution of any order that may be passed under Chapters IX, X, XI or XII :—

(a) is about to dispose of the whole or any part of his or its property, or

(b) is about to remove the whole or any part of his or its property from the local limits of the jurisdiction of the Registrar,

may, unless such security is furnished as he may require, direct the conditional attachment of the said property or such part thereof as he thinks fit.

(2) Such attachment shall have the same force and effect as if it had been made by a Civil Court and shall continue in force until withdrawn or cancelled by the Registrar.

Power to direct payment of dues.

126. Notwithstanding anything contained in Chapter IX, the Registrar or such other person as may be prescribed may on his own motion or on the written requisition of a co-operative society or financing bank for the recovery of any loan due by a defaulting member, after due inquiry, make an award directing payment by such member of the amount found to be due.

Charge and surcharge.

127. (1) Where, as the result of an audit under section 76 or an inspection under section 82 or section 83, or an inquiry under section 84 or a report made in the course of the winding up of a co-operative society, it appears to the Registrar that any past or present officer, has at any time after the commencement of this Act and within a period of four years prior to the date, of such audit, inspection, inquiry or report, as the case may be—

(a) intentionally made or authorised any payment which is contrary to the provisions of this Act or the rules or by-laws, or

(b) by reason of his culpable negligence in respect of any prescribed matter involved the society in any loss or deficiency, or

(c) failed to bring into account any sum which ought to have been brought into account, or

(d) misappropriated or fraudulently retained any property of the society,

the Registrar may inquire into the conduct of such officer.

(2) Upon such inquiry, after giving such officer an opportunity to be heard and, in the case of a payment made contrary to the provisions of this Act or the rules or by-laws, after affording such officer an opportunity to recover the amount of such payment from the payee and credit it to the funds of the society, the Registrar may, subject to the rules, by an order in writing require such officer to pay such sum to the assets of the society by way of compensation in respect of such payment or loss or sum, or to restore such property as the Registrar thinks fit, and to pay such sum as the Registrar may fix to meet the cost of the proceedings under this section.

(3) This section shall apply notwithstanding that such officer may by his act of omission have incurred criminal liability under this Act or any other law for the time being in force.

Penalty for certain misdemeanours.

128. Where it appears to the Registrar that any person has contravened the provisions of this Act, the rules or by-laws—

(a) by sitting or voting as a member of a managing committee, or voting in the affairs of a co-operative society as a representative of another society which is a member of such society, or exercising the rights of a member of a co-operative society, when such person was not entitled so to sit or vote or exercise such rights, as the case may be, or

(b) by employing a loan for a purpose different from that for which it was granted,

the Registrar may, subject to the rules and after affording such person an opportunity to be heard, by an order in writing direct him to pay to the assets of the society

by way of penalty such sum as the Registrar thinks fit in respect of every such contravention.

Registrar's power to enforce performance of obligations.

129. Notwithstanding anything contained in this Act, where any co-operative society is required to take any action under this Act, the rules or the by-laws and such action is not taken—

(a) within the time provided in this Act, the rules or the by-laws, or

(b) where no time is so provided, within such time, having regard to the nature and extent of the action to be taken, as the Registrar may specify by a notice in writing,

the Registrar may call upon any officer of the society whom, in accordance with such principles as may be prescribed, he considers to be responsible for the carrying out of his directions and, after giving such officer an opportunity to be heard, may require him to pay to the assets of the society such sum not exceeding twenty five rupees as the Registrar may think fit for each day until the Registrar's directions are carried out.

Recovery of sums due.

130. Any sum payable to the State Government or to a Co-operative society or the authority constituted under section 81 in accordance with any order, decision or award under this Act shall be recoverable in this manner provided in the Third Schedule:

Provided that, notwithstanding anything contained in the Code of Civil Procedure, 1908, or in any other law for the time being in force, any sum payable in accordance with an award made under section 126 in respect of default in the payment of a loan taken under section 51 or of any instalment of such loan, shall be recoverable—

(a) if the salary of the member exceeds thirty rupees per mensem, by the attachment of such salary to the extent of the instalment in respect of which default has been made or of

half the difference between such salary and thirty rupees, whichever is less, and

(b) if the salary of the member does not exceed thirty rupees per mensem, by the attachment of such salary to the extent of the instalment in respect of which default has been made or of one anna in every rupee of such salary, whichever is less.

Acts of societies. etc. not to be invalidated by certain defects.

131. (1) No act of a co-operative society or managing committee or of any officer or liquidator done in good faith in pursuance of the business of the society shall be deemed to be invalid by reason only of some defect subsequently discovered in the organisation of the society or in the constitution of the managing committee or in the appointment or election of the officer or liquidator or on the ground that such officer or liquidator was disqualified for his appointment.

(2) No act done in good faith by any person appointed under this Act shall be invalid merely by reason of the fact that his appointment has been cancelled by or in consequence of any order subsequently passed under this Act.

(3) The Registrar shall decide whether any act was done in good faith in pursuance of the business of a society.

CHAPTER XIII

Jurisdiction, Appeal and Revision

Indemnity.

132. No suit, prosecution or legal proceedings whatever shall lie against the Registrar or any person subordinate to him or acting on his authority or against a Trustee in respect of anything in good faith done or purporting to be done under this Act.

133. (1) Save as provided in this Act, no Civil or Revenue Court shall have any jurisdiction in respect of— Bar to jurisdiction of Courts.

(a) the registration of a co-operative society or its by-laws or of any amendment of its by-laws, or

(b) the dissolution of a managing committee and the management of the society on dissolution thereof, or

(c) any dispute required under section 86 to be referred to the Registrar, or

(d) any matter concerned with the winding up and dissolution of a co-operative society.

(2) While a co-operative society is being wound up no suit or other legal proceedings relating to the business of such society shall be proceeded with or instituted against the liquidator as such or against the society or any member thereof except by leave of the Registrar and subject to such terms as he may impose.

(3) Save as provided in this Act, no order, decision or award under this Act shall be liable to be challenged, set aside, modified, revised or declared void in any court on any ground whatsoever except want of jurisdiction.

134. (1) An appeal shall lie from an order shown in column 2 of the Fourth Schedule to the authority shown in column 3 and within the period shown in column 4 thereof. Appeal.

(2) Save as provided in this Act, no appeal shall lie against any order, decision or award passed in accordance with this Act, and every such order, decision or award shall be final.

135. (1) The State Government may call for and examine the record of any inquiry or inspection held or made under this Act or the proceedings of the Registrar or any person subordinate to him or acting on his authority, and may pass thereon such order as it thinks fit. Review and revision.

(2) The Registrar may at any time—

(a) revise any order passed by himself, or

(b) call for and examine the record of any inquiry or inspection held or made under this Act or the proceedings of any person subordinate to him or acting on his authority, and if it appears to him that any decision, order or award or any proceedings so called for should for any reason be modified, annulled or reversed, may pass such orders thereon as he thinks fit :

Provided that, before any order is made under clause (a) or clause (b) the Registrar shall afford to any person, likely to be affected adversely by such order, an opportunity of being heard.

CHAPTER XIV

Offences, Penalties and Procedure

Offences and penalties.

136. Any person mentioned in column 3 of the Fourth Schedule who is guilty of an offence shown in column 2 thereof shall, notwithstanding anything contained in this Act or any other law for the time being in force, be liable on conviction to the penalty shown in column 4 thereof.

Cognizance of offences.

137. (1) No court inferior to that a Presidency Magistrate or a Magistrate of the first class shall try any offence under this Act.

(2) For the purposes of the Code of Criminal Procedure, 1898, every offence under this Act shall be deemed to be non-cognizable.

(3) No prosecution shall be instituted under this Act without the previous sanction of Registrar.

138. Any register of members or shares kept by a co-operative society in the prescribed manner shall be prima facie evidence of any of the following particulars entered therein :— Presumption raised by entry in register of members etc.

(a) the date on which the name of any person was entered in such register or list as a member ; and

(b) the date on which any such person ceased to be a member.

139. (1) A copy of any entry in a book of a co-operative society, regularly kept in the course of business and in the prescribed manner, shall, if certified in the prescribed manner, be received in any suit or legal proceedings as prima facie evidence of the existance of such entry, and shall be admitted as evidence of the matters, transactions and accounts therein recorded in every case where, and to the same extent as, the original entry itself is admissible. Proof of entries in societies' books.

(2) No officer or liquidator of a co-operative society and no officer in whose office the books of a co-operative society are deposited after the society has been wound up shall, in any legal proceedings to which the society or the liquidator is not a party, be compelled to produce any of the society's books the contents of which can be proved under sub-section (1), or to appear as a witness to prove the matters, transactions and accounts therein recorded, unless specially so directed by an order of the Court or the arbitrator.

CHAPTER XV

Rules

140. (1) The State Government may, for the whole or any part of Bengal, and for any co-operative society or class of co-operative societies, after previous publication, make rules to carry out the purposes of this Act. Power to make rules.

(2) In particular and without prejudice to the generality of the foregoing power such rules may provide for all or any of the following matters, namely:—

(i) the sums which in addition to those referred to in clauses (o) of section 2, shall be deducted from profits;

(ii) the period which shall be a co-operative year;

(iii) the exemption of any society or class of societies from, and the extent of application to any society or class of societies of any of the provisions of this Act;

(iv) the extent and manner of delegation of powers and duties[1] entrusted to the Registrar;

(v) the condition for registration of any co-operative society or class of societies;

(vi) the forms to be used and the conditions to be complied with in the making of an application for the registration of a co-operative society and the procedure in the matter of such application;

(vii) the procedure and conditions for the division of a co-operative society and amalgamation of co-operative societies;

(viii) the extent to which a co-operative society may limit the number of its members;

(ix) the matters in respect of which a co-operative society shall or may make by-laws, and the procedure and conditions for amending the by-laws;

(x) the procedure and conditions for the exercise by the financing bank of the powers conferred by section 18;

(xi) the procedure for calling and holding general

1. "And duties" inserted by the First Schedule to West Bengal Act XII of 1947.

meetings, and the powers to be exercised by such meetings ;

(xii) the circumstances in which delegates may be elected for the purposes of section 20, the manner of electing delegates for any of the purposes of this Act and the manner in which delegates so elected shall vote ;

(xiii) the date for the closing of the annual accounts of a co-operative society ;

(xiv) the method of constituting the managing committee of a co-operative society (including the appointment of persons to represent appropriate interests) ;

(xv) The qualifications, disqualification, term of office, suspension and removal of members of managing committees and officers of different classes of co-operative societies ;

(xvi) the procedure at meetings of the managing committee and the powers to be exercised and the duties to be performed by the managing committee and officers of a society ;

(xvii) the conditions of deputation of, and the powers to be exercised and duties to be performed by, a servant of the Government deputed under section 24 ;

(xviii) the procedure and conditions for the suspension or supersession of the managing committee of a co-operative society and the method of appointment and qualifications of a person appointed under section 26 ;

(xix) the procedure for registering the address of a co-operative society and any change of its address ;

(xx) the minimum number of paid staff to be employed by different classes of co-operative societies and the qualifications thereof ;

(xxi) the accounts, books and registers to be kept and the returns to be submitted by a co-operative society the form in which and the persons by whom such accounts, books and registers shall be kept and such returns submitted, the method in which such accounts books and registers shall be kept in custody and destroyed and the charges which may be assessed and levied for the preparation of any return not submitted in accordance with the rules;

(xxii) the documents to be kept open to inspection by a co-operative society under section 30;

(xxiii) the manner in which the balance sheet shall be published under section 31,

(xxiv) the conditions and terms under which, the manner in which and the extent to which funds may be raised by a co-operative society by means of shares. deposits debentures or otherwise, and the manner in which provision shall be made for the maintenance of fluid resource;

(xxv) the procedure and conditions for the issue, redemption, re-issue, transfer, replacement or conversion of debentures, issued by a co-operative society;

(xxvi) the maximum amount of principal, the rate of interest and other conditions for the guarantee of debentures undet section 33;

(xxvii) the procedure and conditions for varying an instrument of trust between the Trustee and a co-operative society;

(xxviii) the procedure whereby, and the conditions under which, guarantees or financial assistance may be given under section 33 or section 38;

(xxix) the payments to be made and the conditions to be complied with by members applying for

loans from a co-operative society, the period for which loans may be made and the amount which may be lent to an individual member;

(xxx) the conditions in which and the extent to which loans may be made in relaxation of the provisions of sub-section (1) of section 39 and the determination by a societv of the maxima and normal credits of its members;

(xxxi) the manner in which co-operative societies may be given an opportunity of being heard under sub-section (2) of section 39;

(xxxii) the prohibitions and restrictions subject to which co-operative societies may transact business with persons who are not members;

(xxxiii) the procedure and conditions for change of the form of liability of a co-operative society under section 43;

(xxxiv) in any case a notice or process is issued under this Act or the rules—

(a) the form of the notice or process;

(b) the period of notice to be given;

(c) the persons on or against whom the notice or process shall be issued; and

(d) the conditions to be fulfilled in order to establish proof of the service of such notice or process;

(xxxv) the form of the written statement of claim required by section 44;

(xxxvi) the form of application under, the form of map and statement and the manner of their publica- tion required by, and the manner of levying water rate and embankment protection rate provided in, sections 48 and 49;

(xxxvii) the conditions in which any charge in favour of a co-operative society shall be satisfied and the extent to which and the order in which

the property subject to the charge shall be used in its satisfaction;

(xxxviii) the form of and procedure for an application under section 54 and the procedure for calling, holding and conducting a meeting under that section;

(xxxix) the manner in which a co-operative society may invest or deposit its funds under section 55,

(xl) the proportion which shall be annually carried under section 56 to the reserve fund from the net profits of a co-operative society, the extent to which a society may use its reserve fund in its business and the method in which the reserve fund shall be invested;

(xli) the conditions in which, and the extent to which, the profits of a co-operative society may be distributed among its members under section 57;

(xlii) the co-operative purposes for which a co-operative society shall under section 58 contribute a percentage of its net profits, the extent of the contribution which may be made under clause (b) of that section and the manner of making such contributions;

(xliii) the amount or proportion of contribution which a co-operative society may make to a provident fund under section 59;

(xliv) the conditions in which a member of a co-operative society shall be disqualified from voting under sub-section (2) of section 60;

(xlv) the conditions to be complied with by a person applying for admission or admitted as a member of a co-operative society, the procedure for the admission, expulsion and resignation of members and the conditions for

the exercise by members of the rights of membership;

(xlvi) the manner of recalling a loan under section 63;

(xlvii) the maximum portion of the share capital of a co-operative society which may be held by a member under section 67;

(xlviii) the conditions for the maximum holding of a member under section 68;

(xlix) the procedure and conditions for, and the method of, nomination by a member of a transferee under section 69;

(l) the procedure and conditions for the substitution by a society under sub-section (1) of section 70 of another person for the nominee of a deceased member and for the decision by the society to proceed under sub-section (2) of that section, and the procedure for calculating the value of the share or interest of a member of the sums due to him for the purpose of sections 70 to 74 inclusive.

(li) the manner of determining the value of land for the purposes of clause (3) of section 72;

(lii) the circumstances and manner in which a member may resign or be expelled from a co-operative society;

(liii) the procedure by which a co-operative society shall calculate and write off bad debt;

(liv) the date by which the annual audit shall be made and an audit report submitted, the procedure of an audit officer conducting an audit, the matters on which he shall submit a report, the form in which the statement of accounts shall be prepared for his audit, the limits within which he may examine the monetary transactions of the society, the form of his audit

report and statement of accounts audited and the charges, if any, to be paid by a co-operative society for audit ;

(lv) the manner in which appointments shall be made and control exercised by, and the number of persons comprising, and other functions to be performed by the authority constituted under section 81, the manner of election and nomination of such persons, the fee to be paid to such authority and the manner of such payment ;

(lvi) the conditions to be fulfilled and the qualifications to be possessed by a member of the paid staff of a financing bank certified by the Registrar under sub-section (2) of section 82;

(lvii) the qualifications of and method of appointing an arbitrator, the procedure to be followed in proceedings under Chapter IX and the method of calculating charges incidental to such proceedings and of enforcing decision therein ;

(lviii) the cases in which and the conditions under which it shall be obligatory upon the Registrar to order the winding up of a co-operative society ;

(lix) the procedure for the appointment and removal of, and for the payment of a remuneration to, a liquidator; the condition of such appointment, the conditions in which the Registrar shall exercise control of a liquidator and direct him to exercise his powers under section 91, and the procedure to be followed in proceedings under Chapter X;

(lx) the manner in which the surplus assets of a society which has been wound up shall be disposed of and its records shall be deposited;

(lxi) the manner of effecting distraint and the pro-

cedure for the custody, preservation and sale of the property distrained (including such as is perishable) the investigation of claims of persons other than the defaulter to any right or interest in the distrained property and the postponement of sale pending such investigation;

(lxii) the qualifications and method of appointment of a Sale Officer under section 102 and the powers and functions which such a Sale Officer may exercise;

(lxiii) in the case of a sale of immoveable property under Chapter XI—

(a) the procedure for proclamation and conduct of the sale and the conditions in which an attempted sale may be abandoned;

(b) the method of calculating the expenses incidental to the sale or attempted sale;

(c) the procedure for the receipt, deposit and disposal of the proceeds of sale;

(d) the procedure for a resale if an attempted sale is abandoned or the purchase money is not deposited within the prescribed time, and the penalty to be levied against a purchaser who fails so to deposit the purchase money;

(e) the period within which an application to set aside a sale under section 105 shall be made;

(f) the procedure for the payment to the purchaser of the purchase money and compensation deposited under section 105;

(g) the form and method of submission of a report by a co-operative land

mortgage bank under sub-section (1) of section 106;

(h) the form of sale certificate under section 108 the form of the notices to be supplied under sub-section (3) of that section, the fee payable, for the service of such notices, and the manner of serving such notices on, and of transmitting landlord's fee to, the landlord named in such notices; and

(i) the procedure for the delivery by the court of the property purchased to the purchaser under section 109;

(lxiv) the time within which and the procedure according to which property purchased by a co-operative land mortgage bank at a sale of immoveable property under Chapter XI shall be disposed of by the bank;

(lxv) in respect of a receiver appointed under section 112, the conditions in which he may be appointed or removed, the powers and functions which he may exercise and his procedure in the exercise thereof and the expenses of management and the remuneration which he may receive;

(lxvi) the circumstances in which action may be taken by the bank against the mortgagor under section 114 and the proportion referred to in the explanation to that section;

(lxvii) the procedure and conditions for the exercise of the powers conferred by section 115, and for the imposition of restrictions by the Trustee or the Registrar upon a co-operative land mortgage bank under section 121;

(lxviii) the fee payable under sections 118 and 119;

(lxix) the procedure and conditions for the exercise

of the powers conferred by sections 123 and 124 ;

(lxx) the procedure for the conditional attachment of property under section 125 ;

(lxxi) the persons who may make awards under section 126 ;

(lxxii) the procedure and principles for the conduct of an inquiry under section 127 and the matters referred to in clause (b) of sub-section (1) thereof ;

(lxxiii) the exercise of the powers conferred by section 128 ;

(lxxiv) the procedure and principles for the exercise of the powers conferred by section 129 ;

(lxxv) in the case of appeals lying to the State Government, the authority to which the power of hearing appeals may be delegated ;

(lxxvi). the method of certification of any document under section 139, the procedure and conditions for obtaining copies of documents and the charges to be levied for the supply of certified or uncertified copies ;

(lxxvii) the procedure and conditions for inspecting documents in the office of the Registrar and the charges, if any, to be levied for such inspection ;

(lxxviii) the procedure for and method of calculating any costs, charges or expenses required to be levied under this Act or the rules ;

(lxxix) the procedure for and method of recovery of any sums due under this Act or the rules ;

(lxxx) the method of communicating or publishing any order, decision or award required to be communicated or published under this Act or the rules.

(3) In making any rule under this Act the State

Government may direct that any person committing a breach thereof shall on conviction by a court be punishable with fine which may extend to fifty rupees and, where the breach is a continuing one, with further fine which may extend to ten rupees for every day after the first during which the breach continues subsequent to such conviction.

APPENDIX IV

BIHAR AND ORISSA ACT VI OF 1935.

(THE BIHAR AND ORISSA CO-OPERATIVE SOCIETIES ACT, 1935)

(as modified up to the 26th April, 1957).

An Act to consolidate and amend the law relating to Co-operative Societies in the States of Bihar and Orissa.

Preamble—Whereas it is expedient to facilitate the formation, working and consolidation of co-operative societies for the promotion of thrift, self-help and mutual aid among agriculturists and other persons with common needs and for that purpose to consolidate and amend the law relating to co-operative societies in the States of Bihar and Orissa.

And whereas the previous sanction of the Governor-General under sub-section (3) of section 80A of the Government of India Act has been obtained to the passing of this Act.

It is hereby enacted as follows :—

CHAPTER I

Preliminary

1. Short title and extent—(1) This Act may be called the Bihar and Orissa Co-operative Societies Act, 1935.

(2) It extends to the whole of the States of Bihar including the Santal Parganas.

2. Definitions :—In this Act, unless there is anything repugnant in the subject or context :—

(a) "by laws" means the registered by-laws for

the time being in force, and includes a registered amendment of the by-laws ;

(b) "Co-operative Federation" means a registered society the main object of which is to co-ordinate and facilitate the activities of other registered societies and to foster the growth of the co-operative movement ;

(c) "financing bank" means a registered society the main object of which is to make advances in cash or kind to other registered societies or to agriculturists who are not members of registered societies or to both such societies and agriculturists ;

(d) "liquidator" means a person or persons appointed by the Registrar under sub-section (1) of section 44 to wind up the affairs of a registered society ;

(e) "managing committee" means the committee of management or other body to whom the management of the affairs of a registered society is entrusted ;

(f) "member" includes a person joining in the application for the registration of a society and a person admitted to membership after registration in accordance with the rules and the by-laws of such society ;

(g) "officer" includes a chairman, secretary, treasurer, member of a managing committee or any other person empowered by or under this Act, or the rules or the by-laws of a registered society to give directions in regard to the business of the society ;

(h) "registered society" means a society registered or deemed to be registered under this Act ;

(i) "Registrar" means a person appointed to per-

form the duties of a Registrar of Co-operative Societies under this Act, and

(j) "rules" means rules made under this Act.

3. Indian Companies Act, 1913, not to apply—The provisions of the Indian Companies Act, 1913 shall not apply to registered societies.

4. Saving of existing societies :—(1) Every society now existing which has been registered under the Co-operative Credit Societies Act, 1904 (10 of 1904), or under the Co-operative Societies Act, 1912 (2 of 1912) shall be deemed to be registered under this Act and its by-laws shall, so far as they are not inconsistent with the express provisions of this act, continue in force until altered or rescinded.

(2) All appointments, rules and orders made, notifications and notices issued, all transactions entered into, suits and other proceedings instituted under the said Acts, shall be deemed, so far as may be, to have been respectively made, issued, entered into and instituted, under this Act.

5. Construction of references to Co-operative Societies Act, 1912 in enactments :—All references to the Co-operative Societies Act, 1912 occurring in any enactment made by any authority in India and for the time being in force in the State of Bihar shall, in the application of any such enactment to the said State be constructed as references to this Act.

CHAPTER II

Registration of Societies

6. The Registrar—(1) The State Government may appoint a person to be Registrar of Co-operative Societies for the State or any portion of it, and may appoint persons to assist such Registrar.

(2) The State Government may, by general or special order published in the Official Gazette confer,—

(a) on any person appointed under sub-section (1), to assist the Registrar, all or any of the powers of the Registrar under this Act except the powers under section 26, and

(b) on any Co-operative Federation or financing bank, all or any of the powers of the Registrar under section 20, sub-section (3) of section 28 and section 33.

7. Societies which may be registered—(1) Subject to the provisions of this Act, a society which has as its object the promotion of the common interest of its members in accordance with co-operative principles, or a society established with the object of facilitating the operations of such a society, may be registered under this Act with or without limited liability:

Provided that, unless the State Government by general or special order otherwise directs,—

(a) the liability of a society of which a member is a registered society shall be limited, and

(b) the liability of a society of which the primary object is the creation of funds to be lent to its members, and of which the majority of the members are agriculturists, and of which no member is a registered society, shall be unlimited.

(2) Where the liability of a society is limited, the liability of each member, past member, or the estate of a deceased member shall on liquidation, be limited to the amount, if any, unpaid on the shares held by such member, or where the liability is limited by guarantee, to the amount of such guarantee, or where it is limited in any other manner, then as may be determined by the rules or by-laws subject, however, to the provisions of section 32.

(3) Where the liability of a society is unlimited, all members, past members and the estates of deceased members shall, on liquidation, be jointly and severally liable for and in respect of all its obligations, subject, however, to the provisions of section 32.

8. Conditions of registration—(1) No society, other than a society of which a member is a registered society, shall be registered under this Act which does not consist of at least ten persons above the age of eighteen years and, where the primary object of the society is the creation of funds to be lent to its members, unless such persons—

(a) reside in the same town or village or in the same group of villages, or

(b) save where the Registrar otherwise directs, are members of the same tribe, class or occupation.

(2) The word "limited" shall be the last word in the name of every society with limited liability registered under this Act.

9. Application for registration—(1) An application for the registration of a society shall be made to the Registrar and shall be accompanied by a copy of the proposed by-laws of the society, and the persons by whom or on whose behalf such application is made shall furnish such information in regard to the society as the Registrar may require.

(2) The application shall be signed—

(a) if none of the applicants is a registered society, by at least ten persons qualified in accordance with the requirements of sub-section (1) of section 8, and

(b) if any of the applicants is a registered society, by a duly authorised person on behalf of every such registered society, and where all the members of the society are not registered

societies, by ten other members or, where there are less than ten other members, by all of them.

10. Power of Registrar to decide certain questions—When any question arises whether for the purposes of this Act a person is an agriculturist or a non-agriculturist, or whether any person is a resident in a particular town or village or group of villages, or whether two or more villages shall be considered to form a group, or whether any person belongs to any particular tribe, class or occupation, the question shall be decided by the Registrar, whose decision shall be final.

11. Registration—(1) If the Registrar is satisfied that a society has complied with the provisions of this Act and the rules and that its proposed by-laws are not contrary to this Act or to the rules, he may, if he thinks fit, register the society and its by-laws.

(2) If the Registrar refuses to register a society, he shall record his reasons for such refusal.

(3) An appeal shall lie to the State Government from an order of the Registrar refusing to register a society, within two months from the date of the receipt of the order by at least one of the applicants.

12. Evidence of registration:—A certificate of registration signed by the Registrar shall be conclusive evidence that the society therein mentioned is duly registered unless it is proved that the registration of the society has been cancelled.

CHAPTER III

Incorporation, Duties and Privileges of Registered Societies.

13. Societies to be bodies corporate—The Registration of a society shall render it a body corporate by the name under which it is registered, with perpetual succession and a common seal, and with power to acquire

and hold property, to enter into contracts, to institute and defend suits and other legal proceedings and to do all things necessary for the purposes for which it is constituted.

14. Registered societies to have a managing committee, etc:—

(1) Every registered society shall have an address, registered in accordance with the rules, to which all notices and communications may be sent, and shall send notice, in writing, to the Registrar and to the financing bank, if any, of which it is a share-holder and to the Co-operative Federation, if any, of which it is a member, of any change in the said address within fifteen days of such change.

(2) The management of a registered society shall be vested in a managing committee constituted in accordance with the rules.

(3) Every registered society shall keep open to inspection free of charge at all reasonable times at its registered address—

(a) a copy of this Act.

(b) a copy of the rules governing such society.

(c) a copy of the by-laws of such society, and

(d) a register of its members.

15. Restrictions on borrowing—A registered society shall receive deposits and loans from members and non-members only to such extent and under such conditions as may be prescribed by the rules or by-laws.

16. Restrictions on lending—(1) Except with the general or special sanction of the Registrar and subject to such restrictions as he may impose, a registered society shall not—

(a) make a loan to any person other than a member, or

(b) lend money on the security of moveable property.

(2) The State Government may, by general or special order, prohibit or restrict the lending of money on mortgage of immoveable property by any registered society or class of registered societies.

(3) Where the Registrar has accorded sanction to a financing bank under the provisions of sub section (1) a registered society which is a member of such financing bank may, subject to the terms of the sanction and such other terms and conditions as may be prescribed by the Registrar, act as agent for the financing bank and as such agent carry out, without any commission, all or any tranasactions connected with loans or advances made or to be made by the financing bank.

17. Restrictions on other transactions with non-members—The transactions of a registered society with persons other than members shall be subject to such further prohibitions and restrictions, if any, as the State Government may by rules prescribe.

18. Reserve fund—(1) At least thirty-five per cent of the net profits of a registered society shall each year be carried to a reserve fund, provided that the State Government may by rule increase or decrease this proportion for any society or class of societies.

(2) The reserve fund shall not be used in the business of the society except to such extent and in such manner as may be prescribed by the rules.

(3) Any portion of the reserve fund not used in the business of the society shall be invested or deposited in one or more of the ways specified in section 19 subject to such rules as the State Government may make in this behalf.

19. Investment of funds—Subject to the provisions of sub-section (2) of section 16 a registered society may invest or deposit its funds—

(a) in a Government Savings Bank, or

(b) in any of the securities specified in section 20 of the Indian Trusts Act, 1882 (2 of 1882), or

(c) with the general or special sanction of the Registrar and on such conditions as he may impose—

(i) in the shares or on the security of any other registered society, or

(ii) with any bank or person carrying on the business of banking approved for this purpose by the Registrar,

(d) in any other mode permitted by the rules.

20. Contribution to charitable purpose--Any registered society may, after the amount required by sub-section (1) of section 18 or by any rule has been carried to the reserve fund, contribute an amount not exceeding ten per cent of the net profits to any charitable purpose, as defined in section 2 of the Charitable Endowments Act, 1890.

Provided that the Registrar may, by general or special order prohibit any society or class of societies from making any contribution under this section.

21. Restrictions on division of funds—No part of the funds of a registered society shall be divided by way of bonus or dividend or otherwise among its members;

Provided that after the amount required by sub-section (1) of section 18 or by any rule has been carried to the reserve fund, the balance of the net profits, if any, together with any available profits of past years, may be distributed as dividend among members or paid as bonus or remuneration to a member for any specific service rendered to the society or used for the common benefit of members to such extent and under such conditions as may be prescribed by the rules or by-laws.

22. Charge and set-off in respect of shares or interest of members—A registered society shall have a charge upon the share or interest in the capital and on

the deposits or contribution of a member, past member or deceased member and upon any amount payable out of profits to a member or past member or to the estate of a deceased member in respect of any debt due from such member, past member or the estate of such deceased member to the society, and may set off any sum credited or payable to a member, past member or the estate of a deceased member in or towards payment of any such debt.

23. Prior claim of society—Subject to any claim of the Government in respect of land revenue or any money recoverable as land revenue or as a public demand or any claim of a landlord in respect of rent or any money recoverable as rent, any debt or outstanding demand due to a registered society from any member, past member, or the estate of a deceased member, shall be a first charge—

(a) if the demand is due in respect of the supply of, or any loan granted for the purchase of, seed or manure—upon the crops or other agricultural produce of such member, or past member or belonging to the estate of such deceased member, at any time within two years from the date on which the last instalment of such supply or loan shall become repayable;

(b) if the demand is due in respect of the supply of, or of any loan granted for the purchase of, cattle, fodder for cattle, agricultural or industrial implements or machinery or raw materials for manufacture—upon any cattle or things so supplied, or purchased, the whole or in part from any such loan or upon any articles manufactured from raw materials so supplied or purchased.

23A. Application of section 23 to non-members—Any debt or outstanding demand due to a registered

society, authorised under clause (a) of sub-section (1) of section 16, from any non-member or the estate of a deceased non-member, shall be a first charge on the property of the non-member or belonging to the estate of the deceased non-member to the same extent and subject to the same claims, conditions and restrictions as a debt or outstanding demand due to a registered society from any member or the estate of a deceased member is, under section 23, a first charge on the property of the member or belonging to the estate of the deceased member.

24. Transfer of interest on death of member—(1) A registered society may, on the death of a member, transfer his share or interest in the capital of the society to the person nominated in accordance with the rules or, if there is no person so nominated, to such person as may appear to the society or managing committee to be the heir or legal representative of the deceased member, or may pay to such nominee, heir or legal representative, as the case may be, a sum representing the value of such member's share or interest, as ascertained in accordance with the rules or by-laws :

Provided that—

(i) in the case of a society with unlimited liability, such nominee, heir or legal representative, as the case may be, may require payment by the society of the value of the share or interest of the deceased member ascertained as aforesaid, after deducting the amount of any charge existing under section 22.

(ii) in the case of a society with limited liability the society shall transfer, subject to any charge existing under section 22, the share or interest of the deceased member to such nominee, heir or legal representative, as the case may be, being qualified in accordance

with the rules and by-laws for membership of the society or on his application within three months of the death of the deceased member, to any person specified in the application who is so qualified.

Provided further that no payment of a sum in excess of rupees one hundred shall be made to any such heir or legal representative who has not been nominated in accordance with the rules, until the expiry of six months from the date of the death of the member or until after the decision under section 48 of any claim which may, within that period, be made by any other person.

(2) Subject as aforesaid, a registered society may pay all other money due to a deceased member from the society to such nominee, heir or legal representative, as the case may be.

(3) All transfers and payments made by a registered society in accordance with the provisions of this section shall be valid and effectual against any demand made upon the society by any other person.

24-A. Power of Registrar to sanction compromise between a registered society and its creditors—Notwithstanding anything contained in this Act, where a compromise or arrangement is proposed between a registered society and its creditors or any class of them, the Registrar may, on the application in a summary way of the society or of any creditor, or, in the case of a society in respect of which an order of winding up has been passed, of the liquidator, order a meeting of the creditors or class of creditors, as the case may be, to be called, held and conducted in such manner as may be prescribed by rules.

(2) If a majority in number representing three-fourths in value of the creditors, or class of creditors, as the case may be, present either in person or by proxy at the meeting agree to any compromise or arrangement, the

compromise shall, if sanctioned by an order of the Registrar, be binding on all the creditors or the class of creditors, as the case may be, and also on the society, or in the case of a society in respect of which an order of winding up has been passed, on the liquidator and on all persons who have been, or may be required by the liquidator acting under clause (c) of subsection (3) of section 44 to contribute to the assets of the society.

(3) If at any time it appears to the Registrar that it is expedient that any compromise or arrangement between a registered society and its creditors or any class of them, which had become final in accordance with the law in force on the date of the commencement of the Bihar Co-operative Societies (Amendment) Act, 1942 or which was, after the date, sanctioned by the Registrar under sub-section (2) of this section, should, in the interest of the society or of its creditors or of the said class of creditors, be revised or replaced by a fresh compromise or arrangement, he may either of his own motion, or on the application of the society, or of any creditor, order a meeting of the creditors or class of creditors, as the case may be, to be called, held and conducted in such manner as may be prescribed by the rules, and if a majority in number representing three-fourths in value of the creditors, or class of creditors, as the case may be, present either in person or by proxy at the meeting, agree to the revision of the previous compromise or arrangement, or to any fresh compromise or arrangement, the Registrar may sanction such revised compromise or arrangement or such fresh compromise or arrangement.

(4) Any revised compromise or arrangement or fresh compromise or arrangement sanctioned under sub-section (3) may be revised or replaced by a fresh compromise or arrangement in the like manner and subject to the like conditions as a compromise or arrangement

may be revised or replaced by a fresh compromise or arrangement under sub-section (3).

(5) Any revised compromise or arrangement or fresh compromise or arrangement sanctioned by the Registrar under sub-section (3) or sub-section (4) shall be binding on all the creditors or the class of creditors, as the case may be, and also on the society.

(6) A compromise or arrangement under sub-section (2) or a revised compromise or arrangement or a fresh compromise or arrangement under sub-section (3) or sub-section (4) shall not be liable to be challenged, set aside, modified, revised or declared void in any Court, upon merits or upon any ground whatsoever except want of jurisdiction.

(7) The order of the Registrar calling a meeting of creditors or class of creditors, as the case may be, under sub-section (1) or sub-section (3) and the order of the Registrar sanctioning a compromise or arrangement under sub-section (2) or a revised compromise or arrangement or a fresh compromise or arrangement under sub-section (3) or sub-section (4) shall be published in the Official Gazette.

25. Amendment of the by-laws of a registered society—(1) No amendment of the by-laws of a registered society shall be valid until the amendment has been registered under this Act.

(2) If the Registrar is satisfied that an amendment of the by-laws is not contrary to this Act or to the rules he may register the amendment.

(3) When the Registrar registers an amendment of the by-laws of a registered society, he shall issue to the society a copy of the amendment certified by him, which shall be conclusive evidence that the amendment has been duly registered.

26. Power of Registrar to direct amendment of the by-laws of a registered society—(1) If it appears to the

Registrar that an amendment of the by-laws of a registered society is necessary or desirable in the interest of such society, he may, by order in writing to be issued to the society by registered post, require the society to make the amendment within such time as he may specify in such order.

(2) If any society fails to make any such amendment within the time specified, the Registrar may, after giving the society an opportunity of being heard, register such amendment, and issue to the society by registered post a copy of the amendment, certified by him, which shall be conclusive evidence that the amendment has been duly registered, and such amendment shall be binding on the members of such society.

(3) An appeal shall lie to the State Government from any order of the Registrar passed under sub-section (2) within two months from the date of the issue of such order. The order of the State Government on appeal and subject to the result of such appeal, if any, the decision of the Registrar shall be final.

CHAPTER IV

Rights and Liabilities of Members of Registered Societies

27. Member not to exercise rights till due payment made—No member of a registered society shall exercise the rights of a member unless or until he has made such payment to the society in respect of membership or acquired such interest in the society, as may be prescribed by the rules or by-laws.

28. Votes of members—(1) Subject to the provisions of sub-section (2) each member of a registered society shall have one vote only as a member in the affairs of the society, provided that in the case of an equality of vote, the chairman shall have a casting vote.

(2) A registered society which is a member of any other registered society shall have as many votes as may be prescribed by the by-laws of such other society, and may, subject to such by-laws, appoint any number of its members, not exceeding the number of such votes, to exercise its voting power, provided that no member who is disqualified for such appointment under any rule shall be so appointed.

(3) Save as provided in sub-section (2) voting by proxy shall not be allowed except with the general or special sanction of the Registrar for any society or class of societies.

29. Restrictions on holding of members—No member of a registered society, other than the State Government or another registered society, shall have or claim any interest in the capital of a registered society exceeding one-fifth of the total capital or such smaller proportion as may be prescribed by the rules.

30. Share or interest not liable to attachment—Subject to the provisions of section 22, the share or interest of a member in the capital of, or contribution to, a registered society shall not be liable to attachment or sale under any decree or order of a Court of Justice in respect of any debt or liability incurred by such member, and neither the Official Assignee under the Presidency-towns Insolvency Act, 1909 nor a Receiver under the Provincial Insolvency Act, 1920 shall be entitled to, or have any claim on, such share, interest or contribution.

31. Restrictions on transfer of share or interest—(1) The transfer or charge of the share or interest of a member in the capital of a registered society shall be subject to such conditions as to maximum holding as may be prescribed by this Act or by the rules.

(2) In case of a society registered with unlimited liability, a member shall not transfer any share held by

him or his interest in the capital or property of the society or any part thereof unless—

(a) he has held such share or interest for not less than one year, and

(b) the transfer or charge is made to the society or to a member of the society or to a person whose application for membership has been accepted by the society.

32. Liability of a past member and of the estate of a deceased member—The liability of a past member or of the estate of a deceased member for the debts of a registered society as they existed on the date of his ceasing to be a member or of his decease, as the case may be, shall continue for a period of two years from such date.

CHAPTER V

Audit and Inspection

33. Audit—(1) The Registrar shall audit, or cause to be audited by some person (hereinafter referred to as the auditor) authorised by him by general or special order in writing in this behalf, the accounts of every registered society, once at least in every year.

(2) Every officer or member of the society shall furnish such information in regard to the transactions and working of the society as the Registrar or the auditor may require.

(3) The audit under sub-section (1) shall be conducted according to the rules, and shall include an examination of overdue debts, if any, the verification of the cash balance and securities and a valuation of the assets and liabilities of the society.

(4) The auditor shall submit a report on such examination, verification and valuation, and shall include in his report a statement of—

(a) every transaction which appears to the auditor

to be contrary to law or to the rules or by-laws of the society;

(b) the amount of any deficiency or loss which appears to have been incurred by the culpable negligence or misconduct of any person, and

(c) the amount of any sum which ought to have been but has not been brought into account by any person, and

(d) any money or property belonging to the society which has been misappropriated or fraudulently retained by any person taking part in the organisation or management of the society or by any past or present officer of the society or by any other person.

(5) The Registrar may determine the sum to be paid by any society towards the cost of auditing its accounts under this section, and such sum shall be paid by the society in such manner as the Registrar may direct.

34. Inspection by Registrar—The Registrar may from time to time inspect a registered society himself or cause it to be inspected by some person authorised by him in this behalf by general or special order.

35. Inquiry by Registrar—(1) The Registrar may, of his own motion and shall, on the request of the Collector, or on the application of a majority of the managing committee or of not less than one-third of the members, hold an inquiry, or direct some person authorised by him by order in writing in this behalf to hold an inquiry, into the constitution working and financial condition of a registered society.

(2) The Registrar or the person authorised by him under sub-section (1) may—

(a) require an officer of the society to call a general meeting at such time and place at the head-quarters of the society and require the society

to take into consideration such matters as he may direct; and

(b) if the officer of the society refuses or fails to call such a meeting or if there be no quorum at a meeting so convened, call such meeting himself by giving notice to the members in such a way as he may consider reasonable, notwithstanding any rules or by-laws prescribing the period of notice for calling a general meeting of the society. Any meeting so convened by the Registrar or the person authorised by him under sub-section (1) shall have all the powers of a general meeting convened under the by-laws of the society.

(3) When an inquiry is made under this section, the Registrar shall communicate the results of the inquiry to the society, the financing bank, if any, to which the society is affiliated and to the persons, or authority, if any, at whose instance the inquiry is made.

36. Inspection of books by Registrar—(1) The Registrar may, on the application of a creditor of a registered society, inspect or direct some person authorised by him in this behalf by order in writing to inspect the books of the society.

(2) No inspection shall be made or directed under sub-section (1) unless the application—

(a) satisfies the Registrar that the debt is a sum then due, and that he had demanded payment thereof and has not received satisfaction within a reasonable time; and

(b) deposits with the Registrar such sum as security for the costs of the proposed inspection as the Registrar may require.

(3) Where an inspection is made under sub-section (1), the Registrar shall communicate the results of such

inspection to the creditor of the society, and to the financing bank, if any, to which the society is affiliated.

37. Inspection of books by financing bank—(1) A financing bank may cause an inspection to be made of the books of any registered society which is affiliated to it, and may direct such society to furnish such information, statements and returns as may be required.

(2) An inspection under sub-section (1) may be made by way of the officers of the financing bank or by any member of its paid staff approved by the Registrar by general or special order.

(3) The financing bank shall communicate the result of such inspection to the Registrar and to the society concerned.

38. Power to call for documents and to issue summons—The Registrar or any person authorised to audit the accounts of a society under section 33 or to make an inspection or to hold an inquiry under section 34, 35, 36 or 37—

(a) shall at all reasonable times have free access to the books, accounts, documents, securities, cash and other properties belonging to, or in the custody of, the society and may summon any person in possession of or responsible for the custody of any such books, accounts documents, securities, cash or other properties to produce the same at the office of the society or at any branch thereof or except in the case of a financing bank, at any place at its headquarters;

(b) may summon any person who, he has reason to believe, has knowledge of any of the affairs of the society to appear before him at the office of the society or at any branch thereof or, except in the case of a financing bank, at

any place at its headquarters, and may examine such person on oath ; and

(c) may seize in presence of two persons the books, accounts, documents, securities, cash and other properties belonging to, or in the custody of, the society, if he apprehends any fraud or damage or mutilation of any of the articles above referred to, and the officer so doing shall grant proper receipt therefor, and, when he is an officer other than the Registrar, immediately report the seizure to his immediate superior officer and the Registrar.

Provided that the power under this clause shall be exercised only by such persons as are authorised by rules made in this behalf.

39. Costs of inquiry and inspection—Where an inquiry is held under section 35, or an inspection is made under section 36 the Registrar may, after giving the parties an opportunity of being heard and after recording the reasons, apportion the costs of such inquiry or inspection, or such part of the costs as he may think fit, between the society, the members or creditor demanding an inquiry or inspection and the officers or former officers of the society.

40. Surcharge—(1) Whereas the result of an audit under section 33 or an inquiry under section 35, or an inspection under section 34, section 36, or section 37, or the winding up of a society, it appears to the Registrar that any person who has taken part in the organisation or management of the society or any past or present officer of the society has—

(a) made any payment which is contrary to law or to the rules or by-laws of the society, or is against the directions or instructions of the financing bank for which the society is acting as agent under sub-section (3) of section 16, or

(b) by reason of his culpable negligence or misconduct, involved the society or the financing bank for which it is acting as agent under sub-section (3) of section 16, in any loss or deficiency, or

(c) failed to bring into account any sum which ought to have been brought into account, or

(d) misappropriated or fraudulently retained any property of the society, or of the financing bank for which it is acting as agent under sub-section (3) of section 16, the Registrar may inquire into the conduct of such person, or officer and, after giving such person or officer an opportunity of being heard make an order requiring him to contribute such sum to the assets of the society or of the financing bank, as the case may be, by way of compensation in respect of such payment or loss or sum, or to restore such propery as the Registrar thinks fit, together with such sum as the Registrar may fix to meet the cost of the proceedings under this section :

Provided that, before any order requiring such persons or officer to contribute is passed in respect of a payment referred to in clause (a) reasonable time shall be given to such person or officer to recover the amount of such payment from the payee and credit it to the funds of the society, or, as the case may be, of the financing bank ;

Provided further that no order shall be passed under this sub-section in respect of any act or omission mentioned in clause (a), (b), (c), or (d) except within six years of the date on which such act or omission occurred.

(2) This section shall apply notwithstanding that

such person or officer may have incurred criminal liability under this Act or under any other law.

(3) An appeal shall lie from an order of the Registrar under sub-section (1) to the State Government on application made by the person or officer against whom such order was passed within three months from the date of the communication to him of such order. The order of the State Government on appeal, and, subject to the result of such appeal, if any, the order of the Registrar, shall be final.

CHAPTER VI

Supersession of Managing Committees and Dissolution of Registered Societies

41. Supersession of managing committee—(1) If, in the opinion of the Registrar, the managing committee of any registered society is mismanaging the affairs of the society he may, by order in writing after giving the managing committee an opportunity to state its objections, if any, dissolve for any period not exceeding six months the managing committee and order that all or any of its members shall be disqualified from being elected to the managing committee of the society for a period to be specified in the order not exceeding three years :

Provided that the Registrar may from time to time extend the period specified in such order for further periods not exceeding one year at a time, and not exceeding in the aggregate, two years.

Every order of the Registrar under this sub-section shall state the reasons for which it is made and shall be communicated by registered post to the registered society concerned.

(2) When a managing committee is dissolved under sub-section (1), the Registrar shall appoint person or

persons on such remuneration, if any, as he may fix, to carry on the business of the society, and such person or persons shall, subject to any direction issued by the Registrar from time to time, exercise all the powers and perform all the duties which may under this Act, the rules and the by-laws, be exercised or performed by the managing committee or any officer of the society.

(3) The Registrar shall, within such period from the date of the order under sub-section (1) as may be prescribed by the rules, require such person or persons to call a general meeting of the society at such time and place at the headquarters of the society and require the society to elect a fresh managing committee and to take into consideration such matters, as he may direct, and any meeting convened under this sub-section shall have all the powers of a general meeting convened under the by-laws of the society.

(4) Nothing in this section shall be deemed to affect the powers of the Registrar to order the winding up of a society under section 42 or to cancel the registration of the society under sub-section (8) of section 44.

(5) An appeal shall lie from an order of the Registrar under sub-section (1) to the State Government on application made by any member of the managing committee within three months from the date of communication of the order to the registered society concerned. The order of the State Government on appeal, and subject to the result of such appeal, if any, the order of the Registrar, shall be final.

42. Winding up order—The Registrar may, by notification, order a registered society to be wound up if—

(a) after an inquiry has been held under section 35 or an inspection made under section 34, section 36 or section 37, or on receipt of an application made by three-fourths of the

members of the society, or of his own motion, in the case of a society that has not commenced working or has ceased working, he is of opinion that the society ought to be dissolved, or

(b) it is a condition of the registration of the society that it should consist of at least ten members who have attained the age of eighteen years ; and it is proved to the satisfaction of the Registrar that the number of members has been reduced to less than ten.

43. Appeal against the order of winding up—(1) Any member of a society, in respect of which an order under section 42 has been passed may, within two months from the date of the publication of such order in the Official Gazette appeal to the State Government from such order.

(2) An order under section 42 shall not take effect until the expiry of two months from the date of the publication of such order in the Official Gazette or, if an appeal be preferred, unless and until it is confirmed by notification on appeal.

(3) The order of the State Government on appeal and, subject to the result of such appeal, if any, the order of the Registrar shall be final.

44. Liquidation and dissolution—(1) Where the Registrar has passed an order for the winding up of a registered society, he shall appoint a person or persons to be liquidator of the society.

(2) Notwithstanding anything contained in sub-section (2) of section 43, a liquidator on appointment shall have power to take immediate possession of all assets belonging to the society and all books, records and other documents pertaining to the business thereof and to carry on the business of the society so far as may be necessary and all the rights, duties, assets and liabili-

ties of the society shall be vested in and shall devolve upon the liquidator as such.

(3) Subject to the Reg strar's power of control and revision, such liquidator shall also have power,

(a) to institute and defend suits and other legal proceedings on behalf of the society by his name of office ;

(b) to determine and realise all sums due to the society from any person ;

(c) to determine from time to time, subject to the provisions of section 32, the contribution to be made or remaining to be made by the members or past members or by the estates or nominees, heirs or legal representatives of deceased members or by any officers or former officers, to the assets of the society, and from time to time, to revise any order of contribution until the winding up is completed, and to realise such contributions ;

(d) to investigate all claims against the society and, subject to the provisions of this Act, to decide questions of priority arising between claimants after giving an opportunity of being heard to all the creditors ;

(e) to pay claims against the society (including interest up to the date of the publication in the Official Gazette of the notification ordering the winding up of the society) according to their respective priorities, if any, in full or rateably as the assets of the society permit, and to apply the surplus, if any, remaining after payment of the claims in full, in payment of interest from the said date at a rate fixed by him but not exceeding in any case the rate agreed to be paid by the society ;

(f) to make any compromise or arrangement with persons between whom and the society there exists any dispute, or to refer any such dispute to arbitration;

(g) to determine by what persons and in what proportions the costs of the liquidation are to be borne, and

(h) to give such directions in regard to the collection and distribution of the assets of the society as may appear to him to be necessary for winding up the affairs of the society;

Provided that the liquidator shall not determine the contribution, debt or assets to be recovered from any person unless an opportunity of being heard has been given to such person.

(4) If an appeal from the order of winding up is allowed by the State Government under section 43, the liquidator shall give up possession of the assets, books, records and other documents of the society to the managing committee, and shall cease to carry on the business of the society, provided that all his acts done in his capacity as liquidator shall continue to have legal validity as if they had been done by the managing committee or the society.

(5) With the special sanction of the Registrar, an appeal shall lie to the Court of the District Judge within three months from the date of communication by registered post of an order of a liquidator under clause (b), (c), (d), (e), (g) or (h) of sub-section (3) to the person concerned.

(6) The orders of the liquidator, subject to any order of the Registrar in revision or to any order of the District Judge on appeal, the orders of the Registrar in revision and the order of the District Judge on appeal, if any, shall be final.

(7) When the affairs of the society have been wound

up, the liquidator shall deposit the records of the society in such place as the Registrar may direct.

(8) After the records of a society have been deposited under sub-section (7), the Registrar shall cancel the registration of the society, and the society shall then cease to exist as a corporate body.

CHAPTER VII.

Penalties and Procedure

45. Offences—(1) It shall be an offence under this Act if—

(a) an officer or member of a registered society or any person appointed under sub-section (2) of section 41 intentionally neglects or refuses to do any act required to be done, or to furnish any information required to be furnished, by this Act or by any rule; or

(b) an officer or member of a registered society or any person appointed under sub-section (2) of section 41 wilfully makes a false return or furnishes false information.

(2) Any officer or member of a registered society or any person appointed under sub-section (2) of section 41 guilty of an offence under sub-section (1) shall be punishable with fine which may extend to fifty rupees.

46 Prohibition of the use of the word "co-operative" —(1) No person or society other than a registered society shall trade or carry on business under any name or title of which the word "co-operative" is part without the sanction of the State Government.

Provided that nothing in this section shall apply to the use by any person or his successor in interest of any name or title under which he traded or carried on

business at the date on which the Co-operative Societies Act, 1912, came into operation.

(2) Any officer or member of a society or any person who contravenes the provisions of sub-section (1) shall be punishable with fine which may extend to fifty rupees, and, in the case of a continuing offence, with a further fine of five rupees for each day on which the offence is continued after conviction therefor.

47. Cognizance of offences—(1) No Court inferior to that of a Magistrate of the second class shall try any offence under this Act.

(2) Every offence under this Act shall, for the purposes of the Code of Criminal Procedure, 1898 be deemed to be non-cognizable.

(3) No prosecution for an offence under this Act shall be instituted without the previous sanction of the Registrar, and the Registrar shall not sanction the prosecution of any person unless he has given such person an opportunity of being heard.

48. Disputes—(1) If any dispute touching the business of a registered society (other than a dispute regarding disciplinary action taken by the society or its managing committee against a paid servant of the society) arises—

(a) amongst members, past members, persons claiming through members, past members or deceased members and sureties of members, past members or deceased members, whether such sureties are members or non-members; or

(b) between a member, past member, persons claiming through a member, past member or deceased member, or sureties of members, past members or deceased members, whether such sureties are members or non-members, and the society, its managing committee or any officer, agent or servant of the society; or

(c) between the society or its managing committee and any past or present officer, agent or servant of the society ; or

(d) between the society and any other registered society ; or

(e) between a financing bank authorised under the provisions of sub-section (1) of section 16 and a person who is not a member of a registered society, such dispute shall be referred to the Registrar :

Provided that no claim against a past member or the estate of a deceased member shall be treated as a dispute if the liability of the past member or of the estate of the deceased member has been extinguished by virtue of section 32 or section 63.

Explanation—(1) A claim by a registered society for any debt or demand due to it from a member, non-member, past member, or the nominee, heir or legal representative of a deceased member or non-member or from sureties of members, past members or deceased members, whether such sureties are members or non-members, shall be a dispute touching the business of the society within the meaning of this sub-section even in case such debt or demand is admitted and the only point at issue is the ability to pay or the manner of enforcement of payment.

Explanation—(2) The question whether a person is or was a member of a registered society or not shall be a dispute within the meaning of this sub-section.

(2) The Registrar may on receipt of such reference—

(a) decide the dispute himself, or

(b) transfer it for disposal to any person exercising the powers of a Registrar in this behalf, or

(c) subject to any rules, refer it for disposal to an arbitrator or arbitrators.

(3) Subject to any rules, the Registrar may withdraw any reference transferred under clause (b) of sub-section (2) or referred under clause (c) of the said sub-section and deal with it in the manner provided in the said sub-section.

(4) The appointment of an arbitrator or arbitrators and the procedure to be followed in proceedings before the Registrar or such arbitrator or arbitrators shall be regulated by rules.

(5) In the case of a dispute involving property which is given as collateral security, it shall be competent to the person deciding such dispute to issue a mortgage award which shall have the same force as a mortgage decree of a competent Civil Court.

(6) Any person aggrieved by any decision given in a dispute transferred or referred under clause (b) or (c) of sub-section (2) may, within three months from the date of such decision, appeal to the Registrar.

(7) The Registrar, in the case of disputes under this section, shall have the power of review vested in a Civil Court under section 114 and under Order XLVII, rule 1 of the Code of Civil Procedure, 1908 and shall also have the inherent jurisdiction specified in section 151 of the said Code.

(8) The Registrar may, where it appears to him advisable, either on application or of his own motion, state a case and refer it to the District Judge for decision, and the decision of the District Judge shall be final.

(9) Save as expressly provided in this section, a decision of the Registrar under this section, and subject to the orders of the Registrar on appeal or review, a decision given in a dispute transferred or referred under clause (b) or (c) of sub-section (2), shall be final.

49. Registrar, liquidators and arbitrators to have

certain powers of Civil Court—Subject to any rules, the Registrar, any person authorised to hold an inquiry under section 35 or an inspection under section 36, any liquidator, any person exercising the powers of a Registrar, or any arbitrator or arbitrators appointed under section 48, shall, in so far as such powers are necessary for carrying out any of the purposes of this Act, have power to summon and enforce the attendance of witnesses and parties concerned and to examine them upon oath and to compel the production of any books, accounts, documents or property by the same means and, so far as may be, in the same manner as is provided in the case of a Civil Court under the Code of Civil Procedure 1908.

50. Attachment of property—(1) Where the Registrar is satisfied on the application of the liquidator or of a society, that any person with intent to defeat or delay the execution of any order that may be passed against him under section 44 or 48—

(a) is about to dispose of the whole or any part of his property or

(b) is about to remove the whole or any part of his property from the local limits of the jurisdiction of the Registrar.

the Registrar may, unless adequate security is furnished to his satisfaction, direct the attachment of the said property or such part thereof, as he thinks neccessary, and such attachment shall have the same effect as if it had been made by a competent court.

(2) An order of attachment passed under sub-section (1) shall, on the application of the Registrar, be executed by the Collector in whose jurisdiction the property lies, in the same manner as an order of a Revenue Court.

51. Enforcement of orders—Orders passed under sections 44, 48 and 50 shall, in addition to any other

method of enforcement provided under this Act, on application be enforced as follows :—

(a) when passed by the Registrar, a liquidator or by an arbitrator or arbitrators, by any Civil Court having local jurisdiction in the same manner as a decree of such Court;

(b) when passed by the District Judge, in the same manner as a decree of the District Judge made in any suit pending before him.

52. Recovery of sums due—Any sum payable by any person or by any registered society—

(a) as fees for an audit held under section 33,

(b) in accordance with an order of the Registrar under section 39 apportioning the cost of an inquiry or inspection.,

(c) in accordance with an order passed under section 40,

(d) in accordance with an order of the Registrar or of a liquidator passed under section 44; or

(e) in accordance with an order, decision or award passed or made under section 48,

shall be recoverable, as a public demand in any area, in which the Bihar and Orissa Public Demands Recovery Act, 1914 is in force or as an arrear of land-revenue throughout the whole of the State and the Registrar or other person authorised by him in this behalf, shall be deemed to be the person to whom such public demand is due or to whom such arrear of land-revenue is payable.

53. Recovery of sums due to the Government—All sums due from a registered society or from an officer or member, past or present, or from his sureties or from the estate of a deceased member of a registered society or from his sureties as such to the Government including any costs awarded to the Government may be recovered in the same manner as arrears of land revenue.

54. Property from which sums due from a society can be recovered:—All sums due from a registered society to the Government and all sums recoverable from a registered society under section 33, 39, 44 or 48 may be recovered firstly, from the property of the society; secondly, in the case of a society, the liability of the members of which is limited from the members, past members or estates of deceased members or their sureties subject to the limit of their liability, and thirdly, in the case of other societies, from the members, past members or estates of deceased members or their sureties to such extent or in such proportion as may be determined by the Registrar.

55. Liability of past members—Notwithstanding anything contained in sections 53 and 54, the liability of past members and of the estates of deceased members shall in all cases be subject to the provisions of sections 32 and 63.

56. Power of revision by Registrar—The Registrar may on application or of his own motion revise any order passed by a person exercising the powers of a Registrar or by a liquidator under section 44.

57. Bar of jurisdiction of Courts—(1) Save in so far as expressly provided in this Act, no Civil or Revenue Court shall have any jurisdiction in respect of any matter concerned with the winding up or dissolution of a registered society under this Act, or of any dispute required by section 48 to be referred to the Registrar or of any proceedings, under Chapter VII-A.

(2) While a society is in liquidation, no suit or other legal proceeding shall be proceeded with or instituted against the liquidator as such or against the society or any member thereof on any matter touching the affairs of the society to such terms as he may impose.

(3) No order of the State Government, District Judge, Registrar, a person appointed to assist the Regis-

trar, liquidator, or an arbitrator or arbitrators purporting to be one, which under any provision of this Act is declared to be final, shall be liable to be challenged, set aside, modified, revised, or declared void in any Court upon merits or upon any ground whatsoever except want of jurisdiction.

CHAPTER VII-A

Distraint

57-A. Cases in which application for distraint may be made—Where any debt or outstanding demand is due to a registered society from any member, past member or estate of deceased member, or is due to a registered society, which is duly authorised by the Registrar under any of the provisions of sub-section (1) of section 16 of this Act to grant loans to non-members, from any person who is not a member of a registered society or from the estate of such person if he is dead, the society, may, in addition to any other remedy to which it is entitled by law, present an application to the Registrar distraining, while in the possession of the defaulter:

(1) any crops or other products of the earth standing or ungathered on the holding of the defaulter;

(2) any crops or other products of the earth which have been grown on the holding of the defaulter and have been reaped or gathered and are deposited on the holding or on a threshing floor or place for treading out grain whether in the fields or within a homestead.

57-B. Form of application—(1) Every application under the last foregoing section shall specify—

(a) the holding of the defaulter and the boundaries thereof, or such other particulars as may suffice for its identification;

(b) the name of the defaulter;

(c) the detailed account of the dues;

(d) the nature and approximate value of the produce to be distrained ;

(e) the place where it is to be found, or such other particulars as may suffice for its identification ; and

(f) if it is standing or ungathered, the time at which it is likely to be cut or gathered.

(2) The application shall be signed, and verified in the manner prescribed by the Code of Civil Procedure, 1908 for the signing and verification of plaints.

57-C. Procedure on receipt of application—(1) The applicant shall, at the time of filing an application under the foregoing sections, file before the Registrar such documentary evidence (if any) as he may consider necessary for the purposes of the application.

(2) The Registrar may, after taking such evidence as he thinks fit, admit the application or reject it.

(3) Where the Registrar cannot forthwith admit or reject an application, he may, if he thinks fit, make an order prohibiting the removal of the produce specified in the application, pending the execution of an order for distraining the same or the rejection of the application.

(4) When an order for distraining any produce is made under this section at a considerable time before the produce is likely to be cut or gathered, the Registrar may suspend the execution of the order for such time as he thinks fit, and may, if he thinks fit, make a further order prohibiting the removal of the produce pending the execution of the order for distraint.

(5) An order under sub-section (3) or under sub-section (4) shall be served and published in such manner as the State Government may by rules prescribe.

57-D. Execution of order for distraint—(1) If an application is admitted under the last foregoing section and an order for distraining any produce is made, the

Registrar shall send a copy of the order containing the prescribed particulars to the Collector for execution.

(2) The Collector shall, upon receipt of the order referred to in sub-section (1), depute an officer to distrain the produce specified therein, or such portion of that produce as he thinks fit, and the officer shall proceed to the place where the produce is, and distrain the produce by taking charge of it himself or placing some other person in charge of it in this behalf and publishing a notification of the distraint in accordance with rules to that effect made by the State Government.

Provided that produce, which from its nature does not admit of being stored, shall not be distrained under this section at any time less than twenty days before the time when it would be fit for reaping or gathering.

57-E. Service of demand and account—(1) The distraining officer shall, at the time of making the distraint, serve on the defaulter a written demand for the amount due and the costs incurred in making the distraint, with an account exhibiting the grounds on which the distraint is made.

(2) Where the distraining officer has reason to believe that a person other than the defaulter is the owner of the property distrained, he shall serve copies of the demand and account on that person likewise.

(3) The demand and account shall, if practicable, be served personally; but if a person on whom they are to be served absconds or conceals himself or cannot otherwise be found, the officer shall affix copies of the demand and account on a conspicuous part of the outside of the house in which he usually resides.

57-F. Right to reap, etc. produce—(1) A distraint under this Chapter shall not prevent any person from reaping, gathering or storing any produce, or doing any other act necessary for its due preservation,

(2) If the person entitled to do so fails to do so at

the proper time, the distraining officer shall cause any standing crops or ingathered products distrained to be reaped or gathered when ripe, and stored in such granaries or other places as are commonly used for the purpose or in some other convenient place in the neighbourhood, or shall do whatever else may be necessary for the due preservation of the same.

(3) In either case the distrained property shall remain in the charge of the distraining officer, or of some other person appointed by him in this behalf.

57-G. Sale proclamation to be issued unless demand is satisfied—(1) Unless the demand, with all costs of the distraint, be immediately satisfied, the distraining officer shall issue a proclamation specifying the particulars of the property distraining, and the demand for which it is distrained and notifying that he will, at a place and on a day specified not being less than three or more than seven days after the time of making the distraint, sell the distraint property by public auction :

Provided that when the crops or products distrained from their nature admit of being stored, but have not yet been stored, the day of the sale shall be so fixed as to admit of their being made ready for storing before its arrival.

(2) The proclamation shall be stuck up on a conspicuous place in the village in which the land of the defaulter is situate.

57-H. Place of sale—The sale shall be held at the place where the distrained property is, or at the nearest place of public resort if the distraining officer is of opinion that it is likely to sell there to better advantage.

57-I. When produce may be sold standing—(1) Crops or products which from their nature admit of being stored shall not be sold before they are reaped or gathered and are ready for storing.

(2) Crops or products which from their nature do

not admit of being stored may be sold before they are reaped or gathered and the purchaser shall be entitled to enter on the land by himself, or by any person appointed by him in this behalf, and do all that is necessary, for the purpose of tending and reaping or gathering them.

57-J. Manner of sale—The property shall be sold by public auction in one or more lots as the officer holding the sale may think advisable, and if the demand, with the costs of distraint and sale, is satisfied by the sale of a portion of the property the order of distraint shall not be executed with respect to the remainder.

57-K. Postponement of sale—If, on the property being put up for sale, a fair price (in the estimation of the officer holding the sale) is not offered for it, and if the owner of the property or a person authorised to act in his behalf, applies to have the sale postponed till the next day, or (if a market is held at the place of sale) the next market day, the sale shall be postponed until that day, and shall be then completed, whatever price may be offered for the property.

57-L. Payment of purchase money—The price of every lot shall be paid at the time of sale, or as soon thereafter as the officer holding the sale directs, and in default of such payment the property shall be put up again and sold.

57-M. Certificate to be given to purchaser—When the purchase money has been paid in full, the officer holding the sale shall give the purchaser a certificate describing the property purchased by him and the price paid.

Proceeds of sale how to be applied

57-N. (1) From the proceeds of every sale of distrained property under this Chapter, the officer holding the sale shall pay the costs of the distraint and sale, calculated on a scale of charges prescribed by rules to

be made, from time to time, by the State Government in this behalf.

(2) The remainder shall be applied to the discharge of the amount due for which the distress was made, with interest thereon up to the day of sale, and the surplus (if any) shall be paid to the person whose property has been sold.

57-O. Certain persons may not purchase.

Officers holding sales of property under this Chapter and all persons employed by, or subordinate to, such officers and all officers and members of the staff of registered societies are prohibited from purchasing, either directly or indirectly any property sold by such officers.

Procedure where demand is paid before the sale.

57-P. (1) If at any time after a distraint has been made under this chapter, and before the sale of the distrained property, the defaulter, or any person making a bonafide claim as the owner of the distrained property, where he is not the defaulter, deposits with the Collector executing the order of distraint, or in the hands of the distraining officer, the amount specified in the demand served under section 57-E with all costs which may have been incurred after the service of the demand, the Collector or officer, as the case may be, shall grant a receipt for the same, and the order of distraint shall not be executed.

(2) When the distraining officer receives the deposit, he shall forthwith pay it to the Collector.

(3) After the expiration of one month from the date of a deposit being made under this section the Collector shall pay therefrom to the applicant for distraint the amount due to him, unless in the meanwhile the person making a bonafide claim as the owner of the property distrained has instituted a suit against the applicant contesting the legality of the distraint and claiming compensation in respect of the same.

57-Q. Distraint of property which is under

attachment—When any conflict arises between an order for distraint issued under this Chapter and an order issued by a Civil Court for the attachment or sale of the property which is the subject of the distraint, the order for distraint shall prevail, but if the property is sold under that order, the surplus proceeds of the sale shall not be paid under section 57-N, to the owner of the property without the sanction of the court to which the order of attachment or sale was issued.

57-R. Suit for compensation for wrongful distraint and appeals—No appeal shall lie from any order by the Registrar or a Collector under this Chapter, but any person whose property is distrained on an application made under section 57-A, in any case in which such an application is not permitted by that section, may institute a suit against the applicant for the recovery of compensation;

Provided that, if such an order is passed by an Assistant Registrar or Deputy Registrar exercising the powers of a Registrar, an appeal shall lie to the Registrar and his decision on such appeal shall be final.

57-S. Power to make rules—The State Government may, from time to time, make rules for regulating the procedure in all cases under the foregoing provisions of this Chapter.

57-T. Interpretation—In this Chapter, unless there is anything repugnant in the subject or context—

(a) "Collector" includes an officer appointed by the State Government to discharge any of the functions of a Collector under this Chapter,

(b) "defaulter" means a person (including his legal representative if he is dead) from whom any such debt or outstanding demand as is referred to in section 57-A, is recoverable; and

(c) "holding" means any land used for agricultural or horticultural purposes.

CHAPTER VIII

Miscellaneous

58. Registrar and other officers to be public servants—The Registrar, a person exercising the powers of a Registrar, a person authorized to make an inspection under section 34 or 36 or to hold an inquiry under section 35, a liquidator and an arbitrator or arbtitrators to whom any dispute is referred under section 48, shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code.

59. Proof of entries in Societies' books—(1) A copy of an entry in a book, register or list of a registered society regularly kept in the course of business, shall if certified in such manner as may be prescribed by the rules, be admissible in evidence of the existence of such entry, and shall be admitted as evidence of the matters, transactions and accounts therein recorded in every case where, and to the same extent as, the original entry would, if produced, have been admissible to prove such matters, transactions and accounts.

(2) In the case of such societies as the State Government may, by general or special order, direct, no officer of a society shall in any legal proceedings to which the society is not a party, be compelled to produce any of the society's books, the contents of which can be proved under sub-section (1), or to appear as a witness to prove the matters, transactions and accounts therein recorded unless by order of the Court or a Judge made for special cause.

60. Delegation of power to hear appeals—The State Government may, by general or special order, delegate its power of hearing appeals under the provisions of this Act, except the power of hearing appeals under sections 26, 40 and 41, to any authority specified in such order.

61. Compulsory affiliation of registered societies to a Co-operative Federation—

(1) The State Government may, by general or special order, direct that all or any registered societies situated within a specified area shall be affiliated to a Co-operative Federation in such manner and on such conditions as the State Government may direct.

(2) The State Government may, by general or special order, regulate, from time to time, the constitution and functions of any Co-operative Federation in respect of which an order of compulsory affiliation may have been passed under sub-section.

62. Exemption from requirements as to registration—

(1) Notwithstanding anything contained in this Act, the State Government may, by special order in each case and subject to such conditions, if any, as it may impose, exempt any society from any of the requirements of this Act as to registration.

(2) The State Government may, by general or special order exempt any registered society from any of the provisions of this Act, or may direct that such provisions shall apply to such society with such modifications as may be specified in the order.

63. Limitation—Notwithstanding any of the provisions of the Indian Limitation Act, 1908, the period of limitation for debt including interest due to a registered society by a member thereof shall be computed from the date on which such member dies or ceases to be a member of the society.

64. Power to exempt from income-tax, stamp duty and registration fees—

The Central Government by notification in the Official Gazette may, in the case of any registered society or class of registered societies, remit the income-tax payable in respect of the profits of the society, or of

the dividends or other payments received by the members of the society on account of profits.

(2) The collecting Government may by notification remit, in the case of any registered society or class of registered societies—

(a) the stamp duty with which, under any law for the time being in force, instruments executed by or on behalf of a registered society or by an officer or member thereof and relating to the business of such society or any class of such instruments, or decisions, awards or orders of the Registrar or of any arbitrator or arbitrators under this Act, are respectively chargeable; and

(b) any fee payable under the law of registration for the time being in force.

(In this sub-section "collecting Government" has the same meaning as in the Indian Stamp Act).

65. Nothing in clauses (b) and (c) of sub-section (1) of section 17 of the Indian Registration Act, 1908, shall apply to—

(1) any instrument relating to shares in a registered society, notwithstanding that the assets of such society consist in whole or in part of immoveable property; or

(2) any debenture issued by any such society and not creating, declaring, assigning, limiting or extinguishing any right, title or interest to or in immoveable property except in so far as it entitles the holder to the security afforded by the registered instrument whereby the society has mortgaged, conveyed or otherwise transferred the whole or part of its immoveable property or any interest therein to trustees upon trust for the benefit of the holders of such debentures; or

(3) any endorsement upon or transfer of any debenture issued by any such society.

66. Power to make rules—

(1) The State Government may, for the whole or any part of the State and for any registered society or a class of registered societies, make rules to carry out any of the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may—

(i) prescribe the forms to be used and the conditions to be complied with in the making of applications for the registration of a society and the procedure in the matter of such applications ;

(ii) prescribe the conditions to be complied with by persons applying for admission or admitted as members, and provide for the election and admission of members, and the payment to be made and the interests to be acquired before the exercise of the rights of membership ;

(iii) prescribe the extent to which a society may limit the number of its members and, subject to the provisions of section 29, prescribe the maximum number of shares or portion of the capital of a society which may be held by a member :

(iv) prescribe the conditions of acceptance of resignation of members, and provide for the expulsion of members and for the payments, if any, to be made to members who withdraw or are expelled:

(v) provide for the general meetings of the members and for the procedure at such meetings and the powers to be exercised by such meetings;

(vi) prescribe the matters in respect of which a society may or shall make by-laws, and the procedure to be followed in making, altering and abrogating bylaws, and the conditions to be satisfied prior to such making, alteration or abrogation.

(vii) prescribe the manner in which managing committees and sub-committees thereof shall be consti-

(xxvi) prescribe the procedure and conditions for exercise of the powers conferred by section 49,

(xxvii) prescribe the procedure for calling, holding and conducting meetings of creditors under section 24-A and

(xxviii) provide for all matters expressly required or allowed by this Act to be prescribed by rules.

(3) The power to make rules conferred by this section is subject to the condition of the rules being made after previous publication.

(4) All rules made under this section shall be published in the official Gazette and on each publication shall have effect as if enacted in this Act.

67. The enactments specified in the schedule are hereby repealed in so far as they apply to the State of Bihar and Orissa to the extent specified in the fourth column of the said schedule.

SCHEDULE

Enactments Repealed

Year 1	No 2	Short title 3	Extent of repeal 4
1912	II	The Co-operative Societies Act, 1912	The whole
1920	XXXVIII	The Devolution Act, 1920	So much as relates to Act II of 1912.

APPENDIX V

BURMA CO-OPERATIVE SOCIETIES ACT OF 1956.

It is hereby enacted as follows:—

CHAPTER I

Preliminary

Section.

1. This Act may be called the Burma Co-operative Societies Act, 1956. Short title.

2. In this Act, unless there is anything repugnant in the subject or context— Definitions.

(a) 'by-laws' means the registered by-laws for the time being in force governing the constitution and working of a Society and includes a registered amendment of such by-laws.

(b) 'Society' means a co-operative society registered or deemed to be registered under this Act, including a Federal Society.

(c) a 'Federal Society' means a Society of which members are other Societies.

(d) 'Rules' means rules made under this Act.

(e) 'Registrar' means a person appointed to perform the duties of a Registrar of Co-operative Societies under this Act,

(f) 'member' includes a person joining in the application for the registration of a society and a person admitted to membership after registration in accordance with rules and by-laws ,

(g) 'Committee' means the committee of management or other directing or governing body to

which the management of the society is entrusted ;

(h) 'Officer' includes a President, Vice-President, Chairman, Vice-Chairman, Secretary, Assistant Secretary, Treasurer, Manager, member of Committee and other persons empowered under the rules or the by-laws of the Society, to give directions in regard to the business of the Society, whether they receive any remuneration or not from the Society for their work;

(i) a 'limited' society is a society, the liability of the members of which for the debts of the society is limited (a) to the amount payable on the shares respectively held by the members, or (b) to such amount as the members may respectively undertake to contribute to the assets of the society ;

(j) 'net savings' mean the surplus difference between the total income of a Society and the costs of its operation ;

(k) 'Patronage Dividend' means a share of the profits of a Society divided among its members in proportion to the volume of business done by them with society from which the profits of the society were derived ;

(l) 'dividend' means a share of the profits of a Society divided among its members in proportion to the share capital held by them.

CHAPTER II

The Registrar

The Registrar—scope of functions—Directive

3. (1) The President of the Union may appoint a person to be Registrar of Co-operative Societies for the whole of Burma or any portion of it, and may appoint a person or persons to assist such Registrar, and may,

by general or special order, confer on any such person or persons all or any of the powers of a Registrar under the Act.

Principles of State policy in regard to Societies.

(2) The Registrar in the exercise of his powers under this Act shall direct his policy for the development and betterment of all societies and at the same time check and control any misuse of privileges and assistance afforded to co-operatives under this Act.

CHAPTER III

Registration of Societies—Manner and effects and privileges

Societies which may be registered.

4. Subject to the provisions hereinafter contained, a society which has as its object the promotion of the economic interests of its members in accordance with Co-operative principles, or a Society established with the object of facilitating the operations of such a Society, may be registered under this Act.

Application for registration.

5. Every application for the registration of a Society shall conform to the following requirements :—

(a) The application shall be in the form prescribed by the Rules and shall be accompanied by a copy of the proposed by-laws of the society, which shall state the objects of the Society, and shall comply with the conditions prescribed in Section 18.

(b) Where all the applicants are individuals, they shall include at least ten persons above the age of 18 who thereby undertake to become members of the Society.

(c) Where the objects of the Society is the creation of funds to be lent to its members and where all the applicants are individuals, all the applicants shall reside in the same town or village or in the same group of villages, pro-

vided that the Registrar may relax the above restrictions in suitable cases.

(d) The application shall be signed by everyone of the applicants who is an individual and by a person duly authorised on behalf of every Society which is an applicant.

(e) The application shall be presented to the Registrar and the applicants shall furnish to him all such information about the Society he may require.

Powers of Registrar to decide certain questions.

6. The Registrar shall decide all questions as to whether any application conforms to the requirements of sections 4 and 5.

Registration of Societies.

7. If the Registrar is satisfied that the application and the proposed by-laws are in order, he may unless for reasons communicated to the applicants he sees fit to refuse, register the Society with such by-laws and shall issue to the applicants a certificate of registration which shall be conclusive evidence that all the requirements of this Act and the rules in respect of registration have been complied with. In case of refusal to register, an appeal shall lie to the President of the Union within two months from the date of receipt of the order of refusal.

Limited liability to be set forth in the name of the Society.

8. All Societies shall be registered under this Act as 'limited' and the word 'limited' shall be stated as the last word in the name of each Society wherever the name appears.

Division, transfer of assets, amalgamation and transfer of Societies from one class to another.

9. (1) Any society may by resolutions passed at the general meeting called for the purpose, resolve to

(a) amalgamate a number of societies ;

(b) divide itself into one or more societies ;

(c) transfer its assets and liabilities to another society ;

(d) alter its class or type.

Such resolutions shall be submitted to the Registrar. If the Registrar approves such resolution or amendment he may register them. In case of refusal by the Registrar to register such amendment, an appeal shall lie to the President of the Union of Burma, within two months from the date of the receipt of the order of refusal.

(2) The Registrar shall if he deems it necessary direct any of the proposals or changes enumerated in sub-section (1) above, for consideration at a general meeting of the society concerned. The Registrar shall take action under this Act against societies which fail to consider such directive. The Registrar shall classify the societies in accordance with the requirement of the rules, and his classification shall be final.

Effects of registration, Societies to be bodies corporate.

10. The registration of a Society shall render it a body corporate by the name under which it is registered with perpetual succession and a common seal, and with power to hold property, to enter into contracts, to institute and defend suits and other legal proceedings and to do all things necessary for the purposes of its constitution.

Charge and set-off in respect of shares or interest of member.

11. Every Society shall have a charge upon the share or interest in the capital and upon the deposits of a member or past or deceased member in respect of any debt due from such member or past or deceased member to the Society and may set off any sum credited or payable to a member or past or deceased member in or towards payment of any such debt.

Proof of entries in Societies' books.

12. (1) A copy of any entry in any book, register or list regularly kept in the course of business in the possession of a Co-operative Society shall, if certified in such manner as may be prescribed by the rules, be admissible in evidence of the existence of the document or entry.

(2) In the case of such societies as the President of the Union by general or special order may direct no

officer of a Society shall in any legal proceedings to which the Society is not a party be compelled to produce any of the Society's books, the contents of which can be proved under sub-section (1) or to appear as a witness to prove the matters, transactions and accounts therein recorded, unless by order of the Court or Judge made for special cause.

Exemption from compulsory registration of instruments relating to shares and debentures of societies.

13. Nothing in section 17, sub-section (1) clauses (b) and (c), of the Indian Registration Act, 1908, shall apply to—

(a) Any instrument relating to shares in a Society, notwithstanding that the assets of such a Society consist in whole or in part of immoveable property ; or

(b) Any debenture issued by any such Society and not creating, declaring, assigning, limiting or extinguishing any right, title or interest to or in immoveable property except in so far as it entitles the holder to the Security afforded by a registered instrument whereby the Society has mortgaged conveyed or otherwise transferred the whole or part of its immoveab property or any interest therein to trustee upon trust for the benefit of the holders of such debentures ; or

(c) Any endorsement upon or transfer of any debenture issued by any such Society.

Power to exempt from income-tax, stamp duty and registration charges.

14. The President of the Union of Burma may by notification in the case of any society or class of Societies remit;:

(a) income tax or super tax payable on class of profits, prescribed in the said notification in respect of the profits of the society.

(b) stamp duty with which under any law for the time being in force, instruments executed by or on behalf of the society or by an officer or

member relating to the business of the society, and

(c) any fee payable under the law of registration for the time being in force.

Shares or interest not liable to attachment.

15. Subject to the provisions of Section 11, the share or interest of a member in the capital of a society shall not be liable to attachment or sale under any decree or order of a court of justice in respect of any debt or liability incurred by such member, and no authority under the Insolvency law shall be entitled to or have any claim on such share or interest.

Disposal of produce to or through Society.

16. A society may in respect of disposal of members' produce contract with its members to the effect that every member dispose of his or her produce through the co-operative either in whole or in part, failure to carry out such contract shall entail action against such member under the terms of such contract as may be laid down by the society.

Governmental aid to Societies.

17. Notwithstanding anything contained in any other enactment, the Government of the Union of Burma and the Governments of the constituent units may, subject to such rules as may be prescribed in this behalf, grant loans to, take shares in, or give financial assistance in any other form to any Society.

CHAPTER IV

By-laws and Amendments to By-laws

Bylaws-contents and validity.

18. The original by-laws accompanying the application for registration, as prescribed in Section 5 (a), shall contain, besides the objects of the Society, all the detailed provisions regarding the constitution and working of the Society, including all the subjects specified in the rules. They should, as far as may be, follow the model by-laws framed by the Registrar. The original by-laws get their validity upon registration by the Registrar under section 7.

Amendment of bylaws of a society.

19. (1) Any society may, subject to the provisions of this Act and the rules made thereunder, amend its by-laws including the by-law declaring the name of the Society.

(2) No amendment of the by-laws of a society shall be valid until the same has been registered under this Act, for which purpose a copy of the Amendment shall be forwarded to the Registrar.

(3) If the Registrar is satisfied that any amendment of the by-laws is not contrary to the Act or to the rules, he may register the amendment. In case of refusal, an appeal shall lie to the President of the Union within two months of the date of receipt of the refusal.

(4) An amendment which changes the name of a Society shall not affect any right or obligation of the Society or of any of the members or past members, and any legal proceedings pending may be continued by or against the Society under its new name.

(5) When the Registrar registers an amendment of the by-laws of a Society, he shall issue to the Society a copy of the amendment certified by him, which shall be conclusive evidence that the same is duly registered.

CHAPTER V

Membership—Rights and Liabilities

Member not to exercise rights till due payments are made.

20. (1) No person shall, save as otherwise provided in sub-section (2), exercise the rights of a member of a Society unless or until he has made such payment to the Society in respect of membership or acquired such interest in the Society, as may be prescribed by the rules or by the by-laws of the Society.

(2) In the case of a Society registered after the commencement of this Act, the persons who have signed the application to register the Society may elect a committee to conduct the affairs of the Society for a period

of three months from the date of registration or for such further period as the Registrar may consider desirable,

Provided that the Committee shall cease to function as soon as the members of the Society have elected a Committee in accordance with its by-laws.

21. Every society shall keep a register or list of members or shares, which shall be *prima facie* evidence of any of the following particulars entered therein ; Register of Members.

(a) the date on which the name of any person was entered in such register or list as a member ; and

(b) the date on which any such person ceased to be a member,

22. (1) A general meeting of the members shall be called for by the Committee within a period of three months after the date fixed for making up the accounts for the year under the rules. General meetings.

(2) A special general meeting may be called for at any time by a majority of the Committee and shall be called within one month :

(a) On the requisition in writing from such number of members or proportion of the total number of members as may be prescribed in the bylaws of the Society, or

(b) at the instance of the Registrar, or

(c) in case of a society which is a member of a federal society, at the instance of the Committee of such federal society.

(3) If the general meeting is not called for in accordance with sub-section (2), (a) (b), and (c) above, the Registrar shall have power to call a general meeting of the Society himself.

23. Votes of members shall be as prescribed in the rules. Votes of members

24. If the bylaws of a Society so provide, any member of the society may nominate a person by name Nomination of transferees.

or designation to whom, on such member's death, his share or interest shall be transferred and any money due to him from the Society shall be paid.

Restrictions on shares, interest of members of society.

25. No member, other than a society as member shall hold more than one-fifth of the share capital of the Society, or have any interest in the shares of the Society exceeding three thousand kyats provided that such amount shall not exceed one-fifth of the share capital.

Restrictions on transfer of share or interest.

26. No transfer by a member of his share or interest in a Society shall be valid unless :—

(a) he has held such share or interest for not less than one year ; and

(b) the transferee is a member of such society or a person whose application for membership has been accepted or is another society ; and

(c) the transferee is not prohibited from holding such share or interest by the provisions of this Act or the rules or the by laws of the Society, relating to the maximum amount of a member's holding.

Disposal of share or interest of a deceased member.

27. When any member of a Society dies (a) the committee may transfer his share or interest to the nominee, if any, nominated in accordance with section 24, or if the existence and residence of such nominee, cannot be ascertained by the Committee or for any other reason such transfer cannot be made without unreasonable delay, the Committee may transfer such share or interest to any person who (notwithstanding the absence of probate, letters of administration or succession certificate) appears to the Committee to be entitled to possession of such share or interest as part of the estate of the deceased member, provided always that the transferee shall be a person who is qualified to be the transferee of such share or interest in accordance with section 26 ; (b) if the nominee nominated in accordance with Section

24 or the person appearing to be entitled as aforesaid is not qualified in accordance with section 26 to be transferee of the share or interest of the deceased member, the committee shall pay to the nominee, or to the person appearing to be entitled as aforesaid, the value, as determined in accordance with rules, of the share or interest of the deceased member and may transfer the said share or interest to another person qualified in accordance with Section 26 to be the transferee of the said share or interest on receiving from such person the value thereof.

Disposal of moneys due to a deceased member other than share or interest.

28. All moneys due from a Society to a deceased member other than payments in respect of his share or interest in the Society shall be paid to the person nominated in accordance with Section 24, provided that, if no person has been so nominated or if the existence or residence of the nominee cannot be ascertained by the Committee or if for any other reason payment cannot be made to him without unreasonable delay, the committee may pay such moneys to any person appearing to the Committee to be entitled to possession of the money as part of the estate of the deceased member.

Disposal of share or interest of expelled resigned or insane members.

29. When a member of a society is expelled or resigns in accordance with the rules or the by-laws of the Society or when a member becomes permanently insane, the committee may transfer his share or interest to another person qualified in accordance with Section 26 to be the transferee, on payment to the member who is expelled or resigns or to the guardian of the member who becomes insane, of the value, determined in accordance with the rules or the by-laws of the Society, of the said share or interest.

Disposal of share or interest of a member of a society if wound up.

30. When a member of a society, being itself another society, is ordered to be wound up under section 53 or section 54 and a liquidator has been appointed under section 55, the value of the share or interest of

the society ordered to be wound up shall, on the application of the liquidator, be paid to him and the share or interest may be transferred by the committee to another person or society, qualified in accordance with section 26 to be the transferee on receiving from such person or society the financial value aforesaid. Provided that the Registrar Co-operative Societies considers that such payment shall not impair the financial stability of the Federal Society.

Application of the Govt. Savings Act in certain cases.

31. Subject to the provisions of sections 27, 28, 29 and 30 if any person to whom any money is due from a Society dies or is a minor or becomes insane or otherwise incapable of managing his affairs, the provisions of the Government Savings Banks Act, 1873, shall apply mutatis mutandis to the payment of such money and the powers conferred by that Act upon the Secretary or any officer empowered under section 4 of that Act shall be experienced by the Committee of the Society.

Discharge of persons from liability to make transfer or payment.

32. When any transfer or payment is made in accordance with the provisions of Sections 27, 28, 29, 30 or 31 the Society and all persons shall be discharged from all liability to make such transfer or payment.

Cessation of membership.

33. Membership in a Society shall be terminated by :—

(a) death ,

(b) ceasing to hold one full share ,

(c) resignation after due notice provided that the member is not in debt to the society as principal or surety.

(d) ceasing to reside within the area of operations described in the by-laws.

(e) permanent insanity.

(f) becoming permanently incapable of managing his affairs for any other reason ,

(g) expulsion by the general meeting in accordance with the provisions of rules or the by-laws of the Society.

34. (1) The liability of the members of every Society for payment of the debts of the Society on its dissolution shall be joint and several but subject to such limitation of amount as shall be provided by the bylaws. Liability of members, past members and estates of deceased members.

(2) Subject to any limitation of liability existing at the date of dissolution, persons who have ceased to be member of a society shall, for a period of two years, retain their liability as member; provided that a past member shall not be liable to contribute in respect of any debts of the Society which can be satisfied by contributions from present members, or in respect of any debt contracted after he ceased to be a member.

(3) The estate of a deceased member shall be in like manner and subject to the same restrictions for a period of two years from the time of his decease.

CHAPTER VI

Duties and responsibilities of societies. Their properties and Funds.

35. Every Society shall have an address, registered in accordance with the rules, to which all notices and communications may be sent, and shall send to the Registrar notice of every change thereof within thirty days of such change. Address of Societies.

36. Every society shall keep open to inspection free of charge at all reasonable times at the registered address of the Society: Copy of Act, Rules etc. to be open for inspection.

(a) a copy of the Act,

(b) a copy of the rules,

(c) a copy of the by-laws of such society,

and (d) a register of its members.

Security from certain employees and officers.

37. Every society shall make provision in its by-laws for taking adequate security or bond from its officers and employees handling funds, securities stock or other valuables.

Books, Accounts, Returns and Audit.

38. (1) Every Society shall keep a set of books prescribed by the rules or the by-laws of such Society, to record its business operations.

(2) Every society shall within the period and the manner prescribed in the rules or the by-laws, prepare once at least every year a statement of its affairs.

(3) Every society shall also cause its accounts audited once at least every year by a person authorised in this behalf by the Registrar, by special or general order.

(4) The audit under sub-section (3) shall include an examination of overdue debts if any, the verification of cash balance and securities and other stock and valuation of assets and liabilities of the Society.

(5) The Registrar or the person authorised by him under sub-section (3) shall, at all reasonable times, have free access to the books, accounts, documents, securities, cash and other properties belonging to or in the custody of the society and may summon any person in possession of or responsible for any such books, accounts, documents, securities, cash and other properties to produce the same at any place at the headquarters of the Society or any branch thereof.

(6) Every officer, agent, servant or members of the Society shall furnish such information and render such assistance as may be reasonably required for the purpose of such audit.

Restrictions on loans.

39. Except with the general or special sanction of the Registrar or any officer authorised by him on his behalf a society shall not make a loan to any person other than the member. Loans issued to co-operative societies shall be governed by directives issued in accordance with the rules framed under this Act.

40. A society shall receive deposits and loans from persons who are not members or from any Government or from any Bank, Board or other institution constituted by Acts of Parliament or Statutory Orders only to such extent and under such conditions as may be prescribed by the Registrar or by the rules or bylaws, and shall in respect of such deposits or loans make such provision for the maintenance of fluid resource as the Registrar may, by general or special order in this behalf, prescribe. Restrictions on borrowings.

41. The transactions of a Society with persons other than members shall be subject to such other prohibitions and restrictions, if any, as the President of the Union may, by rule prescribe. Restrictions on other transactions with non-members.

42. (1) A Society may invest or deposit such part of its funds as cannot be applied immediately or at an early date to its purposes— Investment of funds.

(a) in the Government Saving Banks, or

(b) in Promissory notes, debentures, stock, or other securities of the Government of the Union of Burma or its constituent units or guaranteed by such Government, or

(c) in the shares or on the security of any other society, or

(d) with any bank or person carrying on the business of banking approved for this purpose by the Registrar, or

(e) in any other mode permitted by the rules.

(2) Any investments or deposits made before the commencement of this Act, which would have been valid if this Act had been in force, are hereby ratified and confirmed.

43. No society shall pay a dividend to its members on their share capital from any other funds, except net savings of the current year. Such dividend shall not exceed ten per cent of their share capital. Restriction on dividend on share capital.

Restriction on division of funds among members.

44. (1) Every Society which does or can derive net savings from its transactions shall maintain a reserve fund.

(2) At least ¼th of the net savings of every society each year shall be carried to the reserve fund, unless otherwise prescribed in the Rules.

(3) Such reserve fund may be used in the business of the society or may be invested in the manner prescribed in Section 42.

(4) Every society which pays a dividend on share capital to the members shall contribute to a fund for education and supervision maintained by the Registrar or by a federal society established for the purpose at such rate as may be prescribed by the rules.

(5) Subject to the provisions of Section 43, the balance of the net profits of a Society, after making the prescribed provision for the reserve fund and contribution for the fund for education and supervision may, together with any available profits of past years, be distributed among its members to such extent and under such conditions as may be prescribed by the rules or by-laws.

Provident fund for employees and officers and servants.

45. Any Society may establish a provident fund for its members or officers or servants out of the contributions from such members or officers or servants, as the case may be, in accordance with by-laws made by the Society in this behalf and may contribute to such provident fund from its net savings, after the prescribed payments have been made to the reserve fund and fund for education and supervision, at such rates as may be prescribed in the by-laws.

Contribution to charitable purposes.

46. Any Society may, after the prescribed payments have been made to the reserve fund and fund for education and supervision, contribute an amount not exceeding 10 per cent of the remaining net savings over to religious or any charitable purpose.

CHAPTER VII

Inquiry, Inspection, Surcharge, Conditional Attachment of property, supersession, dissolution and Arbitration

47. (1) The Registrar may of his own motion, by himself or by a person duly authorised by him in this behalf, hold an inquiry into the constitution, working and financial condition of a Society. Inquiry by Registrar.

(2) The Registrar shall hold such an enquiry as is contemplated in Sub-section (1)—

(a) on the application of a majority of the Committee of the Society, or,

(b) on the application of not less than one-third of the members of the society, or,

(c) on the requisition of a Society in respect of one of its members, such member being itself a Society.

(3) The Registrar or the person authorised by him under sub-section (1) shall have the following powers, namely :—

(a) He shall, at all reasonable times, have free access to the books, accounts, documents, securities, cash and other properties, belonging to or in the custody of the Society and may summon any person in possession of or responsible for the custody of any such books, accounts, documents, securities, cash or other properties to produce the same at the headquarters of the Society or any branch thereof.

(b) He may summon any person whom he has reason to believe has knowledge of the affairs of the Society to appear before him at any place at the headquarters of the Society or any branch thereof and may examine such person on oath.

(c) He may, notwithstanding any rule or by-laws prescribing the period of notice for a general meeting of the Society, call a general meeting at such time and place at the headquarters of the society or any branch thereof and to determine such matters as may be directed by him. If the officers of the Society refuse or fail to call such a meeting he shall have power to call it himself. Any meeting called under this sub-section shall have all the powers of a general meeting called under the by-laws of the Society and its proceedings shall be regulated by such by-laws.

(4) The result of any enquiry under this section shall be communicated to the society whose affairs have been investigated.

Inspection of books by Registrar.

48. (1) The Registrar shall, on the application of a creditor of a Society, inspect, or direct some person authorised by him by order in writing in this behalf, to inspect the books of the Society, provided that :—

(a) the applicant satisfies the Registrar that the debt is a sum then due and that he had demanded payment thereof and has not received satisfaction within a reasonable time, and

(b) the applicant deposits with the Registrar such sum as security for the costs of the proposed inspection as the Registrar may require.

(2) The Registrar or the person authorised by him under sub-section (1) shall have all the powers of the Registrar when holding an inquiry under section 47.

(3) The Registrar shall communicate the results of any such inspection to the creditor and the Society.

Cost of inquiry and inspection.

49. Where an inquiry is held under section 47 or an inspection is made under section 48, the Registrar may, after giving the parties an opportunity to be heard, apportion the costs or such part of the costs as he may

think right, be ween the Society, the members or creditor demanding an inquiry or inspection, the officers or former officers and member or past members of the Society.

50. (1) If the Registrar, after an inquiry has been held under section 47 or inspection made under section 48, considers it necessary or expedient in the interest of the society, whose affairs have been investigated to do so, he may appoint a suitable person or persons to assist and advise the committee in the management of affairs of the society for such period as he may think fit, and fix his remuneration which shall be paid out of the funds of the Society.

Appointment by the Registrar to assist and advise the committee.

The person so appointed shall have the right to attend all meetings of the Committee and the general body and take part in their proceedings but shall not have the right to vote. He shall work under the direction and control of the Registrar. In the event of his taking objection in writing to any decision of the committee or general body on the ground that such decision is detrimental to the interest of the society, such objection shall forthwith be recorded in the minutes of the meeting at which the decision was made, and the decision shall not be acted upon except with the approval of the Registrar.

51. (1) If, in the opinion of the Registrar, the Committee of any society is mismanaging the affairs of the Society or not functioning properly, he may, by order in writing, after giving an opportunity to the Committee to state its objections, if any, dissolve the committee and appoint a suitable person to manage the affairs of the Society for a specified period not exceeding one year. The period specified in such order may, at the discretion of the Registrar, be extended from time to time provided that such order shall not remain in force for more than four years in the aggregate Every order

Supersession of the Committee

of the Registrar under this sub-section shall state the reasons for which it is made and shall be communicated to the society concerned.

(2) The person so appointed shall have power, subject to the control of the Registrar, to exercise all or any of the functions of the society or of any officer thereof, and to take such action as may be required in the interest of the Society.

(3) The Registrar may fix the remuneration payable to the person so appointed, which, along with the other costs, if any, incurred in the management of the Society shall be payable from its funds.

(4) If during the period of supersession under sub-section (1) the Registrar considers it expedient that a new committee should be appointed to manage the affairs of the Society, he may, and on the termination of the period of supersession thereof shall, direct the society to elect a new committee. If the society refuses or fails to act in accordance with the said direction, the Registrar may, notwithstanding any rule or by-law prescribing the period of notice for a general meeting of the society call such a meeting and a meeting so called shall have the powers of a general meeting called under the by-laws of the Society and its proceedings shall be regulated by such by-laws.

(5) The Committee newly elected shall not enter office prior to the approval of each member so elected by the Registrar.

(6) Until a new Committee is elected and approved by the Registrar, the person appointed under sub-section (1) to manage the affairs of the Society shall continue in office.

(7) The Registrar shall have power to give directions to such person from time to time and to remove him from office and appoint another in his place.

(8) Nothing in this Section shall be deemed to affect

the powers of the Registrar to order the winding up of the Society under section 53 or to cancel the registration of the Society under section 58 (2).

(9) An appeal shall lie from an order of the Registrar under sub-section (1) within two months from the date of receipt of the order to the Society concerned to the President of the Union and the orders of the President on such appeal shall be final.

Disqualification of officers or Committee members by the Registrar.

52. If, in the opinion of the Registrar, any past or present officer or past or present member has mismanaged or been a party to the mismanagement of a society, the Registrar may, by order in writing, after giving the party concerned an opportunity to state his objections, disqualify such party from membership of the Committee or post of any officer of the society, for a period, not exceeding three years, to be specified in the order. Every order of the Registrar under this sub-section shall state the reasons for which it is made and shall be communicated to the society and party concerned. No person so disqualified shall be elected or appointed as the case may be or hold office during the period of disqualification.

(2) An appeal shall lie from an order of the Registrar under sub-section (1) to the President of the Union within two months from the date of receipt of the order and the orders of the President on the appeal shall be final.

Winding up General.

53. (1) If the Registrar, after an inquiry has been held under Section 47 or after an inspection has been made under Section 48 or on the receipt of an application made by not less than three-fourths of the members of a society, is of opinion that a society ought to be dissolved, he may order the society to be wound up.

(2) Any member of the society may, within two months from the date of an order made under sub-section (1), appeal to the President of the Union from such order.

(3) Where no appeal is presented within two months from the making of an order for the winding up of a society, the order shall take effect on the expiry of that period.

(4) Where an appeal is presented within two months, the order shall not take effect until it is confirmed by the appellate authority.

Winding up where members are less than ten.

54. In the case of a society of which all the members are individuals, the Registrar may order the Society to be wound up if at any time it is proved to his satisfaction that the number of members has been reduced to less than ten.

Appointment of Liquidator.

55. Where the Registrar has passed an order under Section 53 or Section 54 for the winding up of a society, he may forthwith appoint a competent person to be liquidator, and such person shall have power, notwithstanding anything in section 53 relating to the time when the order for winding up shall take effect, to take immediate possession of all assets belonging to the society, and of all books, records and other documents and cash and other valuables belonging to the society and to carry on the business of the society so far as may be necessary for the beneficial winding up of the same.

Liquidation Procedure, Powers and duties of the liquidator.

56. (1) Subject to any rules that may be made under this Act, the whole of the assets of the society shall, on the appointment of a liquidator under Section 55, vest in such liquidator.

(2) The Liquidator shall, as soon as the order of winding up takes effect, have power, under the control of the Registrar :—

(a) to realise the assets by sale or otherwise;

(b) to institute and defend suits and other legal proceedings on behalf of the society by name or by designation including referring of disputes for arbitration under Section 60, and issuing requisitions to the Collector for recovery of

sums, ordered to be recovered by him, as arrears of land revenue under Section 63...

(c) from time to time to determine the debts payable and the contribution to be made or remaining to be made by the members or past members or by the estates or nominees, heirs or legal representatives of deceased members or by any officer, to the assets of the society;

(d) to investigate all claims against the society, and, subject to the provision of this Act, to decide questions of priority arising between claimants;

(e) to pay claims against the society (including interest up to the date of the winding up order) according to their respective priorities, if any, in full or rateably, as the assets of the society permit; the surplus, if any, remaining after the payment of the claims being applied in payment of interest from the date of the winding-up order at a rate fixed by him but not exceeding the contract rate in any case;

(f) to determine by what person and what proportions the costs of liquidation are to be borne;

(g) to give such directions in regard to the collection and distribution of the assets of the society as may appear to him to be necessary for the winding up of the affairs of the society.

(3) Subject to the provisions of the rules, the liquidator shall, in so far as such powers are necessary for carrying out the purposes of this section, have power to summon and enforce the attendance of witnesses and to compel the production of any books, documents, securities, cash or other properties belonging to or in the custody of the Society by the same means and (so far as may be) in the same manner as is

provided in the case of a Civil Court under the Code of Civil Procedure of 1908.

(4) Orders made under this Section shall, on application, be enforced by any civil court having local jurisdiction in the same manner as a decree of such court.

(5) The Registrar shall have power to issue directions to the liquidator from time to time, to remove him and to appoint another in his place.

(6) When the affairs of the society have been wound up, liquidator shall deposit the records of the society in such place as the Registrar may direct.

(7) Any person aggrieved by any order of the liquidator may appeal to the Registrar against such order within two months from the date of issue of the order.

Bar of suit in certain cases.

57. Save in so far as expressly provided in this Act, no Civil Court shall take cognizance of any matter connected with the winding up or dissolution of a society under this Act, and, when a liquidator has been appointed, no suit or other legal proceedings shall lie or be proceeded with against the society except by leave of the Registrar and subject to such terms as may be imposed.

Cancellation of registration.

58. (1) The Registrar may cancel an order for the winding up of a society in any case where, in his opinion, the society should continue to exist.

(2) In any other case the Registrar shall, after considering the final report of the liquidator, if any has been appointed, order the registration of the society to be cancelled, and thereupon the society shall cease to exist as a Corporate body.

Surcharge or assessment of damages.

59. (1) Where in the course of an audit under Section 38 or an inquiry under Section 47 or an inspection under Section 48 or the winding up of a society, it appears that any person who has taken part in the

organisation or management of the society or any past or present officer of the society has misapplied or retained or become liable or accountable for any money or property of the society or has been guilty of misfeasance or breach of trust in relation to the society, the Registrar may, of his own motion or on the application of the officer conducting the audit or holding the inquiry or inspection or of the liquidator or committee or any creditor or contributory, examine into the conduct of such person, and, after giving reasonable opportunity to the person concerned to submit his explanation, make an order requiring him to repay or restore the money or property or any part thereof respectively with interest at such rate as the Registrar thinks just or to contribute such sum to the assets of the society by way of compensation in regard to the misapplication, retainer, misfeasance or breach of trust as the Registrar thinks just.

(2) An appeal shall lie to the President of the Union from the order of the Registrar under sub-section (1) within two months of the date of receipt of such order.

(3) This Section shall apply notwithstanding that the act is one for which the offender may be criminally liable.

60. (1) If a dispute touching the constitution or business of a society arises:— *Arbitration.*

(a) Among members, past members and persons claiming through members, past members and deceased members, or

(b) between a member, past member or person claiming through a member, past member or deceased member and the society, its committee or any officer, agent or servant of the society, or

(c) between the society or its committee and any

past committee, any officer, agent or servant, or any past officer, past agent or past servant, or the nominee, heirs or legal representatives of any deceased officer, deceased agent, or deceased servant of the society, or

(d) between the society and any other society, such dispute shall be referred to the Registrar for decision.

Explanation: A claim by a society for any debt or demand due to it from a member, past member or the nominee, heir or legal representative of a deceased member, whether such debt or demand be admitted or not, is a dispute within the meaning of this sub-section.

(2) The Registrar may, on receipt of such reference,

(a) decide the dispute himself, or

(b) transfer it for disposal to any person who has been invested by the President of the Union with powers in that behalf, or

(c) subject to such rules as may be prescribed, refer it for disposal to an arbitrator or arbitrators.

(3) Subject to such rules as may be prescribed, the Registrar may withdraw any reference transferred under clauses (b) or (c) of sub-section (2) and deal with it in the manner prescribed in the sub-section.

(4) The Registrar may, of his own motion or on the application of a party to the reference, revise any decision thereon by the person to whom such reference was transferred or by the arbitrator or arbitrators to whom it was referred.

(5) The President of the Union may, on the application of a party to a reference, revise any decision thereon by the Registrar under clause (a) of sub-section (2).

(6) Any decision passed by the President under sub-section (5) and by the Registrar under sub-section

(4) shall be final and shall not be called in question in any Civil or Revenue Court.

(7) Save as otherwise provided in sub-sections (4) and (5) any decision that may be passed by the Registrar or by the person to whom a reference is transferred or by the arbitrator or arbitrators to whom it is referred, shall be final and shall not be called in question in any Civil or Revenue Court.

Conditional attachment of property.

61. (1) Where the Registrar is satisfied on the application of a society, liquidator or otherwise that any person with intent to delay or obstruct the execution of any order that may be passed against him under Section 49, 56, 59, and 60,

(a) is about to dispose of the whole or any part of his property, or

(b) is about to remove the whole or any part of his property from the local limits of the jurisdiction of the Registrar ;

The Registrar may, unless adequate security is furnished, direct the conditional attachment of the said property or such part thereof as he thinks necessary and such attachment shall have the same effect as if it had been made by a competent Civil Court.

(2) The Registrar may, in order to prevent the ends of justice being defeated, make such order as may appear just and convenient, relating to the properties directed to be attached under sub-section (1). The said order shall have the same effect as the order of a Civil Court having competent authority.

(3) The order made under this sub-section shall, on application by the Registrar, be enforced by any Civil Court having jurisdiction as a decree of such court.

Introductory orders by the Registrar and the President.

62 (1) Wherever in this Act it is provided that the Registrar, before issuing an order or giving a decision, shall give an opportunity to the party concerned to give his explanation or state his case prior to the issue

of such order or giving of such decision, the Registrar may, in order to prevent the ends of justice being defeated, make such interlocutory orders pending the issue of such order or the giving of such decision as may appear to be just and convenient.

(2) Wherever in this Act a provision has been made for an appeal from the orders or decisions of the Registrar to the President of the Union and such appeal is preferred, the President may, to prevent the ends of justice being defeated make such interlocutory orders as may appear to him to be just or convenient or such orders as may be necessary for the ends of justice or to prevent the abuse of the process of appeal to the President.

Recovery of money under orders or decisions or awards issued under this Act.

63. Any amount due under an order or award or decision, as the case may be, passed under sections 49, 56, 59 and 60 after confirmation by the appellate authority if an appeal has been preferred, shall, if not paid in the ordinary course, be recovered through either or both of the following methods :

(a) on a certificate signed by the Registrar or by an officer duly authorised by him for this purpose, such order or award or decision be deemed to be a decree of a Civil Court and shall be executed in the same manner as a decree of such court;

(b) such order or award or decision be executed according to the law and under the rules for the time being in force for the recovery of arrears of land revenue, provided that any application for the recovery in such manner of any such sum shall be accompanied by a certificate signed by the Registrar, or by an officer duly authorised by him for this purpose.

CHAPTER VIII

Offences and Penalties

64. (1) It shall be an offence under this Act if, — Offences.

(a) a society or an officer or member thereof fails without reasonable excuse, to give any notice, send any return or document, do or allow to be done anything which the society, officer or member is by this Act required to give, send, do or allow to be done, or

(b) a society or an officer or a member thereof wilfully neglects or refuses to do any act or to furnish any information required for the purposes of this Act by the Registrar or other person duly authorised by him in writing in this behalf, or

(c) a society or an officer or member thereof wilfully makes a false return or furnishes false information, or

(d) any person wilfully or without reasonable excuse disobeys any summons requisition or lawful written order issued under the provisions of this Act or does not furnish any information lawfully required from him by a person authorised to do so under the provisions of this Act.

(2) Any person punishable under sub-section (1), para (a), (b), (c) or (d) shall be fined upto Kts. 500 or imprisonment up to six months or both. In the case of societies the penalty of fine shall only operate.

65. Any officer of a society who wilfully recommends or sanctions, for his own personal use or benefit, loan in the name of any person shall, on conviction, be punishable with fine which may extend to five hundred kyats. — Penalty for sanctioning benami loans.

Prohibition of the use of the word "Co-operative".

66. (1) No person other than a society shall trade or carry on business under any name or title of which the word "Co-operative" is part, without the sanction of the Registrar.

Provided that nothing in this Section shall apply to the use by any person or his successor in interest of any name or title under which he traded or carried on business at the date on which the Act (Burma Co-operative Societies Act, VI of 1927) came into operation.

(2) Whoever contravenes the provisions of sub-section (1) shall be punishable with fine which may extend to fifty kyats and in the case of a continuing offence with further fine of five kyats each day on which the offence is continued after conviction thereof.

Cognizance of offences.

67. (1) No court inferior to that of Magistrate of the first class shall try any offence under this Act.

(2) No prosecution shall be instituted under this Act without the previous sanction of the Registrar, which shall not be given without giving the party concerned an opportunity to be heard.

CHAPTER IX

Miscellaneous.

Powers of the President and the Registrar to call for proceedings and to pass orders thereon.

68. The President of the Union or the Registrar may call for and examine the record of any enquiry or the proceedings of any officer subordinate to them for the purpose of satisfying himself as to the legality or propriety or regularity of the proceedings of such officer. If in any case it shall appear to the President or the Registrar that any decision or order or proceedings so called for should be modified, annulled or reversed, the President or the Registrar, as the case may be, may pass such order thereon as he may deem fit.

69. (1) All sums due from a society or from an officer, former officer, member or past member or deceased member of a society as such to the Government including any costs awarded to the Government in any proceedings under the Act may be recovered as if they were arrears of land revenue. Recovery of sums due to Government.

(2) Sums due from a society to the Government and recoverable under sub-section (1) may be recovered, firstly from the property of the society, and secondly from the members, past members or the estates of deceased members subject to the limits of their liability under this Act.

70. Notwithstanding anything contained in this Act, the President may, by special order in each case and subject to such conditions, if any, as he may impose, exempt any society from any of the requirements of this Act as to registration. Power to exempt societies from conditions as to Registration.

71. The President may, by general or special order, exempt any society from any of the provisions of this Act or may direct that such provision shall apply to such society with such modifications as may be specified in the order. Power to exempt societies from provisions of this Act.

72. The provisions of the Burma Companies Act, shall not apply to the co-operative societies.

73. (1) Every society now existing which has been registered under the co-operative societies Act, X of 1904 or under the Co-operative Societies Act, II of 1912 or under the Burma Co-operative Societies Act, VI of 1927, shall be deemed to be registered under this Act, and its by-laws shall, so far as the same are not inconsistent with the express provisions of this Act, remain in force until altered or rescinded.

(2) All appointments, rules and orders made notifications and notices issued, and suits and other proceedings instituted under the Act specified under Sub-section (1) shall be, as far as may be, deemed to have

been respectively made, issued and instituted under this Act.

Acts of Societies not to be invalidated by certain defects.

74. No act of a society or any Committee or of any officer of the society, shall be deemed to be invalid by reason only of some defect in the organization of the society or in the formation of the committee or in the appointment or election of the officer or on the ground that he was disqualified for his office.

Rules.

75. (1) The President of the Union may, for the whole or any part of Burma, and for any society or class of societies, make rules to carry out the purposes of this Act.

(2) In particular and without prejudice to the generality of the. foregoing power, such rules may, subject to the specific provisions in the Act on various matters:—

(a) prescribe the maximum number of shares or portion of the capital of a society which may be held by a member ;

(b) prescribe rhe forms to be used and the conditions to be complied with in the making of applications for the registration of a society and the procedure in the matter of such applications ;

(c) prescribe the procedure to be followed for amalgamation, division, transfer of assets of societies and transfer to another class under Section 9 ;

(d) prescribe the matters in respect of which a society may or shall make by-laws, and for the procedure to be followed in making, altering and abrogating by-laws and the conditions to be satisfied prior to such making alterations or abrogation.

(e) prescribe the conditions to be complied with by persons applying for admission or admitted

as members, and provide for the election and admission of members, and the payment to be made and the interests to be acquired before the exercise of the right of membership;

(f) regulate the manner in which funds may be raised by means of shares or debentures or otherwise;

(g) provide for ordinary and special general meetings of members and for the procedure at such meetings and the procedure for passing the resolutions and the powers to be exercised by, such meetings;

(h) provide for the appointment, suspension and removal of the members of the committee and other officers and for the procedure at meetings of the committee and for the powers to be exercised and the duties to be performed by the committee and other officers;

(i) prescribing the conditions disqualifying membership, appointment or election to committees and representing their societies in other societies;

(j) prescribe the security or bond to be taken from officers and employees, accounts and books be kept by a society and provide for the audit of such accounts and the charges, if any, to be made for such audit and for the periodical publication of a balance sheet showing the assets and liabilities of a society;

(k) prescribe the returns to be submitted by a society to the Registrar and provide for the persons by whom and the form in which such returns shall be submitted, and, in case of failure to submit any such return, the alternative method of getting them and for the levy of the expenses of preparing them;

(l) provide for the persons by whom and the form in which copies of entries in books of societies may be certified and for the charges to be levied for the supply of such copies ;

(m) provide for the formation and maintenance of a register of members and of a register of shares ;

(n) provide for the appointment of an arbitrator or arbitrators to decide disputes, the procedure to be followed in proceedings before the Registrar, arbitrator or arbitrators or other person deciding disputes including the appointment of a guardian for a party to the dispute who is a minor or who, by reason of unsoundness of mind or mental infirmity, is incapable of protecting his interests, the levy of the expenses incidental to such proceedings, and the enforcement of the decisions or award in such proceedings ;

(o) provide for the withdrawal and expulsion of members, for the mode in which the value of share or interest shall be ascertained, for the nomination of transferees and for the payment, if any, to be made to members who withdraw or are expelled or become incapable of continuing as member and for the liabilities of past members or the estates of deceased members ;

(p) prescribe the prohibitions and restrictions subject to which societies may trade with persons who are not members ;

(q) prescribe the payments to be made and the condition to be complied with by members applying for loans, the period for which loans may be made and the amount which may be lent, to an individual member ;

(r) provide for the formation and maintenance of reserve funds, and the objects to which such funds may be applied and for the investment of any funds under the control of a society;

(s) prescribe the extent to which a society may limit the numbers of its members;

(t) prescribe the conditions under which net savings may be distributed to the members of a society and the maximum rate of dividend on shares which may be paid by societies, the rate at which societies shall contribute to the education and supervision fund;

(u) prescribe the procedure to be followed by a liquidator appointed under section 55, and provide for the disposal of the surplus assets if any, of the society;

(v) subject to the provisions of this Act, determine cases in which an appeal shall lie from the orders of the Registrar, and prescribe the procedure to be followed in presenting and disposing of all appeals under this Act;

(w) prescribe the procedure to be followed by the Registrar for the issue of orders under Sections 59, 61 and 62, and by the President under Section 62.

(x) prescribe the period for which and the terms under which aid may be given by Government to societies;

(y) provide for the custody of property attached under this Act;

(z) provide for the inspection of documents in the Registrar's office and the levy of fees for granting certified copies of the same;

(3) The power to make rules conferred by this Section is subject to the condition of the rules being made after previous publication.

(4) In making any rule under this Act the President of the Union may direct that any person committing a breach thereof shall, on conviction, be punishable with fine up to Kts. 500/ or imprisonment upto six months or both.

Repeal.

76. The Burma Co-operative Societies Act, VI of 1927, is hereby repealed.

APPENDIX VI

U. P. CO-OPERATIVE SOCIETIES ACT (UNITED PROVINCES ACT III OF 1919)

(Further amended by U. P. Act I of 1944 and Uttar Pradesh Act No. III of 1950 and U. P. Act No. X of 1957)

Whereas it is expedient further to facilitate the formation of co-operative societies for the promotion of thrift and self help among agriculturists, artisans, and persons of limited means and for that purpose to amend the law relating to co-operative societies ; it is hereby enacted as follows :

Prelimininary

1. (1) This Act may be called the Co-operative Societies Act 1912 and

(2) It extends to the whole of British India.

(Amended by U. P Act. III of 1919 to make it applicable to the territories for the time being administered by the Lieutenant Governor of the United Provinces and further amended by U. P. Act III of 1950 to make it extend to the whole of Uttar Pradesh.)

Sections **2 to 10**.

As in Act II of 1912.

Amendment of the by-laws of a registered society.

11. (1) No amendment of the by-laws of a registered society shall be valid until the same has been registered under this Act, for which purpose a copy of the amendment shall be forwarded to the Registrar.

(2) If the Registrar is satisfied that any amendment of the by-laws is not contrary to this Act or to the rules, he may, if he thinks fit register the amendment.

(3) When the Registrar registers an amendment of the by-laws of a registered society, he shall issue to the society a copy of the amendment certified by him which shall be conclusive evidence that the same is duly registered.

Powers to Registrar, Co-operative Societies to compel societies to change by-laws.

11-A. (1) Where the Registrar is of the opinion, whether on the representation of the society or any of its members or otherwise, that an amendment of the by-laws of the society is necessary or desirable in the interest of the society or in public interest, he may, by order in writing to be issued to the society by registered post, require the society to make the amendment within such time as he may specify in such order.

(2) On the failure of the society to make any such amendment within the time specified the Registrar may, after giving the society an opportunity of being heard, register such amendment and issue to the society by registered post a copy of the amendment so certified by him, which shall be conclusive evidence that the amendment has been duly made and registered. A by-law so amended by the Registrar shall be a by-law of the society.

(3) An appeal shall lie to the State Government from any order of the Registrar passed under sub-section (2) within two months from the date of the issue of such order. The order of the State Government on appeal and subject to the result of an appeal, if any, the decision of the Registrar shall be final.

Change of names of societies and its effects.

11-B. A society may by amending its by-laws change its name and such change shall in no case affect any right or obligation of the society or any of its members or past members or the heirs of the deceased members and any legal proceedings may be continued by or against the society under its new name.

Change of liabilities.

11-C. (1) A society may by amending its by-laws and subject to the provisions of section 4 and section

11 change its liability from 'limited' to 'unlimited' or vice-versa.

(2) No amendment of a by-law relating to the change of liability of a society shall be registered by a Registrar, unless he is satisfied that

(i) sufficient notice has been given to every member of the society and all persons whose interests are in his opinion likely to be affected by the proposed change of liability, and

(ii) with respect to every such member or person who, in the opinion of the Registrar, is entitled to object—

(a) either his assent has been obtained to the change, or

(b) if he signifies his objection—

(i) he is allowed to withdraw his share, if he is a member;

(ii) his debt or claim has been discharged or determined and secured to the satisfaction of the Registrar within three months from the date of the notice.

Amalgamation and transfer of assets and liabilities of societies.

11-D (1) Subject to the approval of the Registrar, any two or more societies may, by a resolution passed by a majority of the members present at a general meeting of each such society held for the purpose amalgamate as a single society; and the resolutions of the societies concerned shall, on such amalgamation and subject to compliance of the provisions below, vest the assets and transfer the liabilities of the amalgamating societies in the amalgamated society which shall be deemed to be duly registered under the Act;

Provided that before the passing of such a resolution each member of the societies concerned shall be given fifteen days' clear notice of such a resolution together with the date and the place of the meeting.

(2) The amalgamating societies shall, by resolu-

tions passed in accordance with the procedure laid down in sub-section (1), transfer all their assets and liabilities to the amalgamated society :

Provided that when any such amalgamation involves the transfer of liabilities by any society, it shall be subject to three months' prior notice to creditors of such societies, whose liabilities are proposed to be transferred ;

Provided further that if a creditor of any of the society concerned object to such amalgamation by thirty days' notice in writing prior to the date of amalgamation to the societies concerned, the amalgamation shall not be made, unless the dues of such creditor have been satisfied.

Splitting or division of societies.

11. E (1) Subject to the approval of the Registrar, any society may, by a resolution passed by a majority of the members present at a general meeting of the society held for the purpose, resolve to divide itself into two or more societies ;

Provided that before passing of such a resolution each member of the society, and all persons whose interests are likely to be affected by the resolution, shall be given thirty days' clear notice of such a resolution specifying the area of operation of, and the names of members of, each of the new societies together with the date and the place of meeting.

(2) Notwithstanding anything contained in sub-section (1)

(a) any member of the society may, on receipt of a notice of a resolution for the division of the society, intimate his intention of not becoming a member of any or all of the societies ; and

(b) any person, whose interest is likely to be affected by the resolution, may, on receipt of notice of the resolution for the division of the society, demand satisfaction of his claim.

(3) After the expiry of three months from the date

of despatch of a copy of the preliminary resolution to all the members and persons likely to be affected by the resolution, another special general meeting of the society, of which at least fifteen days' clear notice shall be given to its members, shall be convened for considering the preliminary resolution, and if at such meeting the preliminary resolution is confirmed by a resolution passed by a majority of the members present either without changes or with such changes as in the opinion of the Registrar are not material to the subject-matter of the preliminary resolution, the Registrar may, subject to the provisions of sub-sections (4) and (6), register the new societies and the by-laws thereof, after cancelling the registration of the old society, which shall be deemed to be dissolved from the date of such cancellation.

Explanation—The opinion of the Registrar as to whether the changes made in the preliminary resolution are or are not material shall be final.

(4) At a special general meeting referred to in sub-section (3) a special resolution shall also be passed for—

- (i) the repayment of the share capital of all the members who have given notice under sub-section (2), and
- (ii) satisfaction of the claim of the persons whose interests are likely to be affected by the resolution of division of the society and who have given notice under sub-section (2).

(5) Where within such time as the Registrar may consider reasonable, the share capital of the members or the claims of the persons likely to be affected by the resolution for the division of the society referred to in sub-section (4), is not secured or satisfied, the Registrar shall refuse to register the new societies.

(6) Notwithstanding anything contained in the Transfer of Property Act, 1882 or the Indian Registration Act, 1908 the registration of the new societies shall

be sufficient to vest the assets and transfer the liabilities of the original society in and to the new societies in the manner specified in the preliminary resolution as confirmed under sub-section (3).

Final authority of society.

11. F (1) The final authority of a society shall vest in the general body of its members in general meeting;

Provided that, in such circumstances, as may be prescribed by the Registrar, the final authority may vest in the delegates of such members elected in the manner prescribed by the Registrar and assembled in the meeting of the general body.

Amendment of Section 19 of Act II of 1912.

(2) The meeting of the general body of the member of a society or of the delegates of such members, shall be summoned and shall exercise its authority in such manner as may be prescribed.

Member not to exercise rights till due payment made.

12. No member of a registered society shall exercise the rights of a member unless or until he has made such payment to the society in respect of membership or acquired such interest in the society as may be prescribed by the rules or by-laws.

Section **13** to **18**—As in Act II of 1912.

Charge created in favour of societies Act V of 1908.

19. Notwithstanding anything contained in the Provincial Insolvency Act, 1920 or in the Code of Civil Procedure 1908, or in any other enactment relating to land-tenure for the time being in force, any debt or outstanding demand due to a society by any member past or present, or standing against the estate of any deceased member, shall, subject to any claim of the State Government arising from a loan granted by it before, but not after, the grant of loan by the society and in respect of land revenue, or any sum recoverable as arrears of land revenue, be a first charge—

(a) if such debt or demand is due in respect of the supply of, or any loans to provide the means for seed, manure, labour, subsistence, fodder for cattle or any other thing incidental to the

conduct of agricultural operations, upon the crops or agricultural produce of such member;

(b) if such debt or demand is due in respect of any loan to provide the means of paying the rent or revenue of the land, or for irrigation facilities, upon the land whose rent or revenue has been so paid, or as the case may be, the irrigation facilities provided;

(c) if such debt or demand is due in respect of supply of, or any loan to provide the means for the purchase of cattle, agricultural implement or warehouse for the storage of agricultural produce, upon the crops and agricultural produce of such member and also upon the cattle, agricultural implements or warehouse so supplied or purchased wholly or in part from any such loan, at any time within three years from the date on which the last instalment of such loan becomes repayable;

(d) if such debt or demand is due in respect of the supply of or, any loan for the purchase of raw materials, industrial implements plant and machinery, workshops, warehouses or business premises upon the raw materials or other things so supplied or purchased by such member and in the case of a debt or demand in respect of the supply or for the purchase of raw materials, also upon articles manufactured from such raw materials;

(e) if such debt or demand is due in respect of any loan for the purchase or redemption of land purchased or redeemed, upon the land purchased or redeemed by such member, past member, or deceased member, and

(f) if such debt or demand is due in respect of any loan for the purchase or construction of

any house or building or any portion thereof or in respect of the supply of materials for such constructions, upon the house or building or materials so purchased or constructed by such member :

Provided that along with the 'charge' created under sub-section (1) all the property including any amount payable by a society to the indebted member shall be liable to attachment and sale in execution of a decree in favour of the society irrespective of the object of the loan or the set off of sums due on the member of the society towards the payment of such debt.

20. As in Act II of 1912.

Shares or interest not liable to attachment.

21. Subject to the provisions of section 20, the share or interest of a member in the capital of a registered society shall not be liable to attachment or sale under any decree or order of a Court of Justice in respect of any debt or liability incurred by such member, and neither the Official Assignee under the Presidency Town Insolvency Act, 1909 nor a Receiver under the Provincial Insolvency Act, 1907, shall be entitled to or have any claim on such share or interest.

Sale of the holding of a Sirdar in execution of decree for money due to a society.

21. A. (1) Notwithstanding anything in section 153 of the U. P. Zamindary Abolition and Land Reforms Act, 1950 the interest of a Sirdar in his holding may on the application of the society concerned, be sold in execution of any decree or order for payment of money, being money due to such society in respect of a debt or demand referred to in clauses (a) to (f) of section 19, as though it were land revenue payable in respect of the holding within the meaning of section 284 of the said Act.

(2) The expressions 'holding' and 'Sirdar' in this Section shall have the meaning assigned to them in the Uttar Pradesh Zamindari Abolition and Land Reforms Acts 1950.

Sections **22** to **27**. As in Act II of 1912.

28. The Governor General in Council, by notification in the Gazette of India, may in the case of any registered society or class of registered society remit— Power to exempt from income-tax stamp duty, and registration fee.

(a) the income tax payable in respect of the profits of the society, or of the dividends or other payments received by the members of the society on account of profits.

(b) the stamp duty with which, under any law for the time being in force, instruments executed by or on behalf of a registered society or by an officer or member and relating to the business of such society, or any class of such instruments, are respectively chargeable.

(c) any fee payable under the law of registration for the time being in force.

28A. (1) A member of a society may execute an agreement, in favour of the society, providing that his employer shall be competent to deduct from the salary or wages payable to him by the employer such amoun as may be specified in the agreement and to pay the amount so deducted to the society in satisfaction of any debt or other demand owing by the member to the society. Deductions from salary to meet societies claim in certain cases.

(2) On the execution of such agreement, the employer shall, if so required by the society, by a requisition in writing and so long as such debt or demand or any part of it remains unpaid make the deduction in accordance with the agreement and pay the amount so deducted to the society.

(3) The provision of this section shall also apply to all such agreements of the nature referred to in sub-section (1) as were in force on the date of the commencement of the Co-operative Societies (United Provinces Amendment) Act, 1944.

Sections **29** to **41**. As in Act II of 1912.

Winding up.

42. (1) Where the registration of a society is cancelled under section 39 or 40, the Registrar may appoint a competent person to be liquidator of the so iety.

(2) A liquidator appointed under sub-section (1) shall have power—

(a) to institute and defend suits and other legal proceedings on behalf of the society by his name of office ;

(b) to determine the contribution to be made by the members and past members of the society respectively to the assets of the society ;

(c) to investigate all claims against the society and, subject to the provisions of this Act, to decide questions of priority arising between claimants ;

(d) to determine by what persons and in what proportions the costs of the liquidation are to be borne ; and,

(e) to give such directions in regard to the collection and distribution of the assets of the society as may appear to him to be necessary for winding up the affairs of the society.

(3) Subject to any rules, a liquidator appointed under this section shall, in so far as such powers are necessary for carrying out the purposes of this section, have power to summon and enforce the attendance of witnesses and to compel the production of documents by the same means and (so far as may be) in the same manner as is provided in the case of civil court under the Code of Civil Procedure, 1908

(4) Where an appeal from any order made by a liquidator under this section is provided for by the rules it shall lie to the Court of the District Judge.

(4A) Any sum ordered under this section to be

recovered as a contribution to the assets of the society or costs of liquidation may be recovered on a requisition being made in this behalf to the Collector by the Registrar, Co-operative Societies, in the same manner as arrears of land revenue.

(5) Save as provided in sub-section (4A) orders made under this section shall, on application be enforced as follows:—

(a) when made by a liquidator, by any civil court having local jurisdiction in the same manner as a decree of such court ;

(b) when made by the Court of the District Judge, on appeal in the same manner as a decree of such court made in any suit pending therein.

(6) Save in so far as is hereinbefore expressly provided, no civil court shale have any jurisdiction in respect of any matter connected with the dissolution of a registered society under this Act.

Exemption from Indian Limitation Act.

42-A. Notwithstanding any provision in the Indian Limitation Act, 1908, the period of limitation for the institution of suits to recover any sum, including interest thereon due to a society by a member thereof shall be computed from the date on which such member dies or ceases to be a member of the society.

43. As in Act II of 1912.

Recovery of sums due to Government.

44. (1) All sums due from a registered society or from an officer or member or past member of a registered society as such to the Government, including any costs awarded to the Government under section 37, may be recovered in the same manner as arrears of land revenue.

(2) Sums due from a registered society to Governmen and recoverable under sub-section (1) may be recovered, firstly from the property of the society ; secondly, in the case of a society of which the liability

of the members is limited, from the members subject to the limit of their liability, and thirdly, in the case of other societies from the members.

44-A. Where as a result of an audit under section 17, or an inquiry under section 35, or an inspection under section 36, or the winding up of a society under section 42, it appears to the Registrar that any person, who has taken part in the organisation or management of the society or any past or present officers of the society, has:—

(a) made any payment which is contrary to law or by-laws of the society or instructions of any authority empowered by the Act to issue the instruction, or

(b) by reason of his culpable negligence or misconduct, involved the society in any loss or deficiency, or

(c) failed to bring into account any sum which ought to have been credited in the account of the society, or

(d) misapplied, misappropriated or fraudulently retained any funds or property of the society or has otherwise become liable or accountable therefor, or

(e) is guilty of misfeasance or breach of trust in relation to the society,

the Registrar may notwithstanding that the act is one for which the defaulter may be criminally liable on his motion, or on the application of the officer conducting the audit or holding the inspection or inquiry or the liquidator, inquire into the conduct of such person or officer, and, after giving such person or officer an opportunity of being heard, make an order requiring him to contribute such sum to the assets of the society by way of compensation in respect of such payment or loss of sum, or to restore such property, as the Registrar thinks

fit together with such sum as the Registrar may fix to meet the costs of proceedings under this section :

Provided that before any order requiring such person or officer to contribute is passed in respect of a payment referred to in clause (a) reasonable time shall be given to such person or officer to recover the amount from the payee and to credit it to the funds of the society :

Provided further that no order shall be passed under this sub-section in respect of any act or omission mentioned in clauses (a) to (e) except within five years of the date on which such act or omission occurred,

(2) An appeal shall lie from the order of the Registrar under sub-section (1) to the State Government on application made by the persons or officer against whom such order was passed within three months from the date of the communication to him of such order. The order of the State Government on appeal, and subject to the result of such appeal, if any, the order of the Registrar shall be final.

APPENDIX VII

THE MULTI-UNIT CO-OPERATIVE SOCIETIES ACT, 1942.

ACT NO. VI OF 1942.

MARCH 2, 1942.

An act to provide for the incorporation, regulation and winding up of co-operative societies with objects not confined to one province.

Whereas it is expedient to provide for the incorporation regulation and winding up of Co-operative Societies with object not confined to one province :

It is hereby enacted as follows :

Short title, extent and application.

1. (1) This Act may be called the Multi-unit Co-operative Societies Act, 1942.

(2) It extends to the whole of British India.

(3) It applies to all Co-operative Societies with objects not confined to one province incorporated before the commencement of this Act under the Co-operative Societies Act, 1912 (II of 1912), or under any Act relating to Co-operative Societies in force in any province, and to all Co-operative Societies with objects not confined to one province to be incorporated after the commencement of this Act.

Co-operative Societies to which this Act applies registered before commencement of this Act.

2. (1) A Co-operative Society to which this Act applies which has been registered in any province under the law relating to co-operative societies in force in that province shall be deemed in any other province to which its objects extend to be duly registered in that other province under the law there in force relating to Co-operative Societies but shall save as provided in sub-sections (2) and (3), be subject for all the purposes of

registration, control and dissolution to the law relating to co-operative societies in force for the time being in the province in which it is actually registered.

(2) Where any such co-operative society has established before the commencement of this Act or established after the commencement of this Act a branch or place of business in a province other than that in which it is actually registered, it shall, within six months from the commencement of this Act or the date of establishment of the branch or place of business, as the case may be, furnish the Registrar of Co-operative Societies of the Province in which such branch or place of business is situated a copy of its registered by-laws, and shall at any time it is required to do so by the said Registrar submit any returns and supply any information which the said Registrar might require to be submitted or supplied to him by a Co-operative Society actually registered in that Province.

(3) The Registrar, Co-operative Societies of the Province in which a branch or place of business such as is referred to in sub-section (2) is situated may exercise in respect of that branch or place of business any powers of audit and of inspection which he might exercise in respect of a Co-operative Society actually registered in the Province.

Co-operative Societies to which this Act applies registered after commencement of this Act.

3. (1) A Society which might, if its objects were confined to one province, be registered as a co-operative society in any province under the law relating to co-operative societies in force in that province shall notwithstanding that its objects are not confined to the province in which its principal place of business is to be situated, be deemed for the purposes of registration as a co-operative society to be situated wholly in that province, and may be registered by the Registrar of Co-operative Societies of that province in accordance with the law relating to co-operative societies for the

time being in force in that province, and if so registered shall be deemed in any other province to which its objects extend to be duly registered in that other province under the law there in force relating to co-operative societies but shall save as provided in sub-section (2) and (4), be subject for all the purposes of registration, control and dissolution to the law relating to co-operative societies in force for the time being in the province in which it is actually registered in that province.

(2) Where any such co-operative society establishes branch or place of business in a province other than in which it is actually registered, it shall within six months from the date of establishment of the branch or place of business furnish to the Registrar of Co-operative Societies of the province in which such branch or place of business is situated a copy of its registered by-laws and shall at any time it is required to do so by the said Registrar submit any return and supply any information which the said Registrar might require to be submitted or supplied to him by a co-operative society actually registered in that province.

(3) The Registrar of Co-operative Societies of the Province in which a branch or place of business such as is referred to in sub-section (2) is situated may exercise in respect of that branch or place of business any powers of audit and of inspection which he might exercise in respect of a co-operative society actually registered in that province.

Appointment & powers of Central Registrar of Co-operative Societies.

4. (1) The Central Government may, if it thinks fit appoint a Central Registrar of Co-operative Societies.

(2) The Central Registrar of Co-operative Societies, if appointed shall exercise in respect of any co-operative society to which this Act applies, to the exclusion of Provincial Registrars, the powers and functions exercisable by the Registrar of Co-operative

Societies of the Province in which such society is actually registered.

Penalty for failure to furnish information required under this Act.

5. If any co-operative society fails to furnish the information which it is required to furnish by or under sub-section (2) of section 2 or sub-section (2) of section 3 or to submit any return required to be submitted under either of those sub-sections, the society, and any officer or member of the society responsible for the failure shall each be liable to fine which may extend to fifty rupees, and the registration of the society may, at the discretion of the Registrar of Co-operative Societies of the province in which the society is actually registered, be cancelled.

Power of Central Government to make rules.

6. The Central Government may, by notification in the Official Gazette, make rules for carrying into effect the provision of this Act.

INDEX

(Note: Continuous references to such items as the Indian Companies Act, etc., with which the reader is not likely to be concerned, have been omitted).

Abrogation. 257
Accounts. 292
Address. 150, 257
Adherence, unconditional 265, 266.
Admission of members. 263, 264, 265
Age of Members. 125, 126
Agricultural bank 2, 3.
" " defects of, 4
Agriculturist 129
Amendment of this Act, proposed, see notes to preamble, sections 20, 24, 35-38, 41, 44, 45, 50.
" by-laws 135, 136.
" rules 249.
Amount of loan 327
Appeal 232, 240.
" against refusal to register 374.
" from award 312
" order of dissolution 231, 232, 372, 374
" " of liquidator 240
" " " orders of Registrar 372
Application for registration 130, 255
Arbitrator or arbitration, 299-318
" costs of 310
Area for membership 125
Ascertainment of debts of members 267
Attachment, exemption from 168, 169
Audit. 152-160, 294.
" fees for, 295
Award, defined 300, 301 (See Arbitrator)
" how enforced. 313
" setting aside 317
" stamp on, 188, 189
" where remitted 316
Balance sheet 296, 297
" six monthly, publication, 152.
Bankers' Books Evidence Act. 179, 180

Body, corporate 160
Bonus, defined. 168
" published 213
Books of a society 178-180, 292, 293
Burma Act of 1956
By-laws 101—102, 130—132, 257—261
" amendment of 135, 136, 260-262
" defined. 100-101
Cancellation of registration 231, 232
" " " " effects 234, 235
" " " " liquidator's action on, 374-376
Capital explained 123, 168
" from reserve fund. 271, 272
" interest on (See interest) 216-217, 367-370
Capitalism and co-operation. 26-27, 30-34
Central Bank 112-113
Certificate of amendment. 135--137
" registration 135, 255
Charge for audit 155-156
Charge upon share or interest. 166-168
Charitable Endowments Act 221
" purpose 221
Collector defined 154
" may inspect 152
" direct inquiry 224
Combination of objects 38
Committee of 1900, 5.
" " 1901, 6.
" " management 79, 282-288
" " defined 100
" " disqualification for, 286. 287
" " duties of 284, 285
" " election of 72, 284
" " powers of 285
" " removal from 284
Committee on co-operation 1, 9, 10, 67-69
Common good fund 358
Compulsion in co-operation 23
Compulsory by laws 256-258
Conditions of registration 125
Consequences of default. 262
Contribution 239, 242-244, 373-4
" to charitable purpose. 221, 222
Co-operation, definition of 14-16, 19

Co-operation difference from capitalism, 27
" principles of, 15, 16, 27
" what it is 14-16
Co-operative Planning Committee 107, 108n, 156n.
" societies Act, history of 7
" spirit 21
" use of word prohibited 384
Co-partnership. 32
Copies. 16, 298
Corporate body 160
Cost of inquiry 230
" " inspection at the instance of a creditor 229-30
" " liquidation. 375
" " things done under Court's order 298.
Credit society, conditions of, 66-85.
Creditor, right of, to apply for inspection. 227-228.
Debts, ascertainment of, 267.
" full disclosure of, 266.
Deceased member, 169-173.
" " value of interest of, 324.
Definitions and explanations:—
" agriculturist, 129.
" amendment 135.
" arbitration 300.
" audit 152.
" award 300.
" balance sheet 296.
" banking facilities, 338.
" bonus 168.
" by-laws 101.
" capital 168.
" certified copy, 298.
" charitable purpose 221.
" collector 154.
" committee 100.
" contribution 243.
" co-operation, 14-16.
" debenture 181-n.
Definitions and explanations:—
" deposit 202.
" dispute 305.
" financial facilities, 338.
" funds 209.
" immovable property 195.

Definitions and explanations:—
" interest 168.
" invest 209.
Definition of joint-stock company, 113.
" Limited, 109.
" Loan 202.
" local government 104.
" member 100.
" moveable property 195.
" officer 101.
" past member 176.
" person 103.
" registered society 101.
" registrar 101.
" renewal 345.
" reserve, general 353.
" " specific 354.
" rules, 101.
" share 269.
" short term loan 338.
" sign 131.
Delegation of powers 379.
Deposits 271.
" accounts, confidential 272.
" distinguished from loan 202
" from non-members 201-203.
Disputes 302.
Disqualifications of members of committee 286, 287.
Dissolution of society 231.
Distribution of profits, 213-16, 366-8.
Dividend 367.
Division of funds 213-16.
Duties of members of committee 288.
" " registered societies 150.
Economic interests 109.
Fducation and co-operation, 222.
Eighteen years 125.
Election of committee 284.
" " members (See Member).
Evidence Act 133.
" before arbitrators 309.
" of entries in books, 179-81, 298.
" membership 178-9.
" registration, 134.

Exemption from attachment 168.
„ Companies Act, 385.
„ Income Tax, 183.
„ Registration 183.
„ stamp duty, 183.
Expulsion of members 321.
Famine Commission Report of 5.
Five Year Plan, Second 402-420.
Friendly Societies Act 9.
Full disclosure of debts, 267.
Funds, division of 213.
„ investment of 209.
General meetings (See meetings)
Government Savings Bank, 210-11.
Incometax, exemption from, 183.
Indian Registration Act, 181-84.
„ Trusts Act on investment, 211.
Industrial and Provident Societies Act 9.
Inquiry by registrar 224.
Inquiry by registrar, costs of 227.
„ prior to registration 255.
Insane members, interests of 325.
Inspection of documents, 253.
Rules and by-laws, 151.
Interest:—
„ general discussion, 56-66.
„ on capital 216-17.
„ on loans 352.
Investment of funds, 209.
Joint stock Company, defined, 113.
„ „ prohibited from membership, 268.
Legal Practitioners in arbitration 308.
Liability 47-55.
„ and shares, 243.
„ limited, 116.
„ maximum 276.
Liability of deceased member 177.
„ „ members 116.
„ „ past members 174.
„ unlimited 118.
Limit to number of members 362.
Limited explained, 116.
„ at end of name, 125.
Limited means, persons of 98.

Liquidator, powers of, 239.
" a public servant, 246.
" remuneration. prior to all claims, 379
Loan, 192-205, 326-42.
" amount of, 327.
" interest on 352.
" maximum 329.
" order of preference 326.
" period for, 336.
" punctuality in repayment. 343.
" purpose of 330.
" renewal of 345.
" security for 346.
" supervision over expenditure 75-76.
" to members of committee 326.
Loans on trust 351.
Local Government, defined, 104.
" and appeals, 232.
" distribution of profits, 213.
" may exempt from conditions as to registration provisions of this Act, 382.
" " make rules 249.
" " vary liability 109.
" " prohibit mortgage security 193.
" " prohibit transactions with non-members 205.
" " sanction use of "Co-operative" in name 384.
Marketing 416.
Maximum dividend 367.
" liability 276.
" loan 329.
" number of shares 254.
Meetings 279—282.
Member, age of 125
" adherence to rules, 265
Member, admission or election of, 267
" ascertainment of debts of, 267
" can borrow from money-lenders, 268
" debts of, full disclosure, 267
" deceased, interest of 169
" " liability of, 177
" definition of, 100
" deposits of, 272
" disqualifications of, 265, 286
" expulsion of, 321

Member, insane 264
" liability of (See Liability)
" limit to number of 362
" of committee (See Committee of Management)
" past (See Past Member)
" qualifications of, 125
" register of, 178
" removal of, 319
" residence of, 109—11
" restriction of benefits to, 112-14, 205-9.
" restriction on interest of, 122—24
" rights and liabilities of, 138-150
" vote of, 141
" withdrawal of, 319
" women 268-n,

Minors, 264
Money-lenders, resort to, by members 268
Mortgage security 193
Moveable property as security, 193
Name of society 259
" " 'limited' at end of 124
Nicolson, Sir F., 4
Nominee (or nomination) 171—3
Non-agricultural societies 117
Non-members as securities, 349
Non-members, dealings with, 192, 202. 205-209.
" Maximum liability from 202—4
" rights of, 209

Oaths Act, 309
" taken by inspecting officers, 225

Object of loan (See Purpose)
" reserve fund, 359
" societies 35.

"Past members" defined, 176
" liability of 174-7

Pawnbroking 195
Payment on withdrawal, 321
Periods for loans 336
Personal sureties, 349
Person claiming through a member 306
Person, defined, 103
" of limited means, 97
Pioneers, Rochdale, 9, 19, 86

Powers of Committee 285
„ „ Local Government (see Local Government)
Principles of Co-operation, 18—21
Prior claim 162
Privileges 160—190
Productive purpose 330
Profits, distribution of, 213-16, 366-68
Promotion of thrift, 94
Proxies, 144
Proxies exempt from stamp duty, 145
Public Demands Recovery Act, 247
Publication of balance sheet, 296
Punctuality in repayment 343
Qualifications of sureties 349
Quorum at a meeting, 280
" adjournment for want of 281
Raiffeisen principles 85
Rate of interest 352
Recovery of costs 231
„ „ sums due to Government 380-81.
Registered Society, definition of 101
" " duties of, 150—160
" " privileges of, 160--192
" " property of, 193—223
Register of members, 178
Registrar, appointment of, 104
" defined, 101
„ discretion of 105
„ duties of 105, 133-38
" power of, to decide questions 129
" " to inquire, 224
" qualification of, 107, 108
Registration Act 181-4
" application for 130
" cancellation of certificate of 133
" conditions of 125
" discretion as to 129
" effects of 133
" evidence of 134
" inquiry prior to, 255
„ necessity for 114
" societies eligible for 109
Removal of members, of the committee 287-88
Renewal of loans 345

Reserve fund 271-2, 353-362
" " disposal of, 353-360
" " employment of, 359
" " general, explained, 353
" " object of, 362
" " specific, 353
Reserve Bank of India, 404
Reside, 127
Restrictions on borrowing 202
" " interest, 122
" " loans 192
" " membership 362
" " transfer of share or interest 147
" " transactions with non-members, 205
Returns 297
Revocation of nomination 324—6
Rights of members 138-50
Rochdale Pioneers, 9, 19, 86
Rules 179
" publication of, 380
Rural Credit Survey, All India 79n, 96n, 417-19
Savings Bank 95
Security for loans, 346
" " immoveable property as, 193
" " members' share should never be 196
" " moveable property as, 193, 197
Self-help 97
Set-off 166
Shares and liability, 122
" voting power, 141
" charge on, 166
Shares exemption from attachment, 167
" general discussion of 269
" holders, rules as to, 263
" maximum holding, 254
" transfer of, 147
" value of 173
"Sign" defined, 130
Socialism and Co-operation, 30
Societies which may be registered 4
" consumers' 45
" co-operative 14—28
" farming 46, 410
" general 46

Societies housing 46
" non-agricultural producers' 45
" resource, 45
Stamp duty 188
" " proxies exempted, 144-46
State Partnership 416-18
Summary powers of recovery 246-48
Supervision of expenditure of loans, 75—76
Sureties 76-8
" non-members as 349
" qualifications of 346—8
" sanction to renewals necessary, 345
Takkavi system 3
Thrift 94
Trade Unions 30-34.
Transfer of share or interest 169
" " fund 148
Transactions with non-members 192, 202, 205-09
" Local Government can only limit but not order to carry
" out, 111
Trusts Act (Indian) 209
Unions, 112
Unlimited liability (See Liability) 47, 118
" consequences of 49—52
" how limited in practice, 119-21
Unregistered society, 114
Usury Laws 58-60
Value of deceased members' interest 324
" a share 169-70
Vote, 13
Ware housing Corporation 409
Winding-up 238
Withdrawal, 319
" payment on, 321
Women, 268